

***United States Court of Appeals
for the Second Circuit***

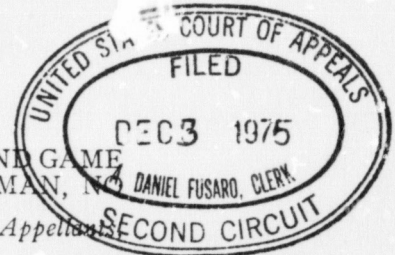


APPENDIX

APPEAL
75-6068
PETITION
75-4164

United States Court of Appeals

FOR THE SECOND CIRCUIT



SUN ENTERPRISES, LTD., SOUTHERN NEW YORK FISH AND GAME
ASSOCIATION, INC., LYMAN E. KIPP, RICHARD E. HOMAN, NO
BOTTOM MARSH and BROWN BROOK,

Plaintiffs-Appellants

—against—

RUSSELL E. TRAIN, *et al.*

["Federal Defendants"],

Defendants-Appellees, and

HERITAGE HILLS OF WESTCHESTER, *et al.*

["Private Defendants"],

Intervenors.

SUN ENTERPRISES, LTD., SOUTHERN NEW YORK FISH AND GAME
ASSOCIATION, INC., LYMAN E. KIPP, RICHARD E. HOMAN, NO
BOTTOM MARSH and BROWN BROOK,

Petitioners,

—against—

ADMINISTRATOR OF THE U. S. ENVIRONMENTAL
PROTECTION AGENCY, RUSSELL F. TRAIN,

Respondent, and

HERITAGE HILLS OF WESTCHESTER, *et al.*

Intervenors.

**Appeal from the U. S. District Court for the Southern
District of New York**

**Petition to Review Order of U. S. Environmental
Protection Agency**

APPENDIX OF INTERVENORS

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PAGINATION AS IN ORIGINAL COPY

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SUN ENTERPRISES, LTD., SOUTHERN
NEW YORK FISH AND GAME ASSOCIATION,
INC., LYMAN E. KIPP, RICHARD E.
HOMAN, NO BOTTOM MARSH and BROWN
BROOK,

Plaintiffs, : 75 Civ. 68 (DBB)

-against-

ORDER OF FINAL
JUDGMENT *ON*

RUSSELL E. TRAIN, as Administrator :
of the U.S. Environmental Protec- :
tion Agency ["EPA"], GERALD N. :
HANSLER, as Region II Administrator, :
EPA, ROGERS MORTON, as Secretary, :
U.S. Department of the Interior, :
and THE UNITED STATES OF AMERICA :
["Federal Defendants"], ET AL., :

Defendants. :

On the prior Order of this Court dated May 27, 1975 and

entered in the docket of the Clerk of the U.S. District

Court for the Southern District of New York on June 4, 1975,

and it appearing to the Court that there is no just reason

for delay in entering final judgment upon granting defendants'

motions to dismiss, it is pursuant to Rule 54(b) of the

Federal Rules of Civil Procedure,

ORDERED and finally ADJUDGED that all claims in the
plaintiff's amended complaint dated April 18, 1975 against
Russell E. Train, as Administrator, U.S. Environmental Pro-
tection Agency ["EPA"], Gerald N. Hansler, as Region II
Administrator, EPA, Rogers Morton, as Secretary, U.S. Depart-
ment of the Interior, and the United States of America
["Federal Defendants"], are dismissed, and that final judg-
ment be entered accordingly by the Clerk of this Court.

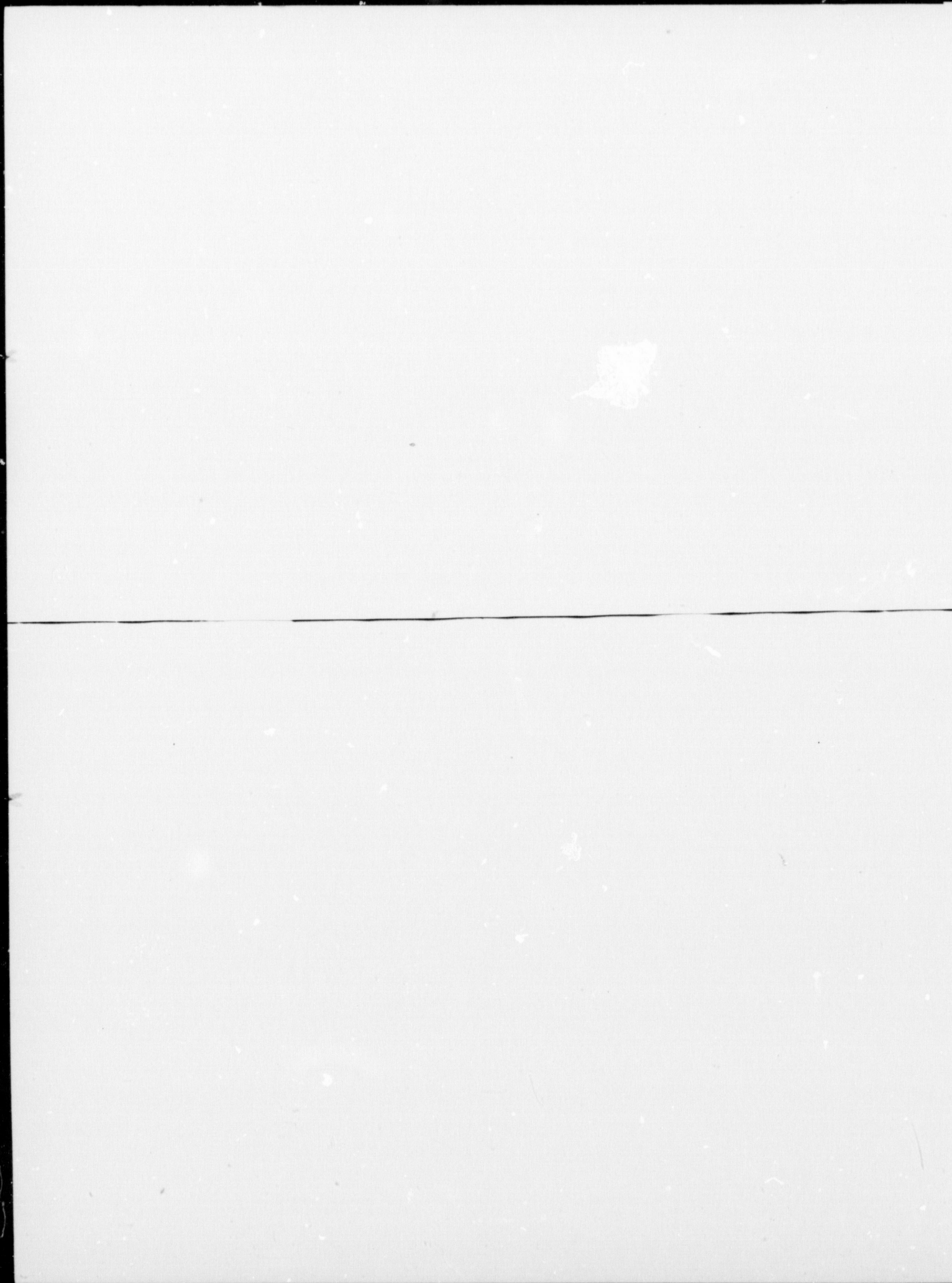
Dated: New York, New York
July 23, 1975

W. B. Boush
U.S.D.J. *MA*

MICROFILM

JUDGMENT ENTERED - 7/24/75

Supreme F. Berglund



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SUN ENTERPRISES, LTD., SOUTHERN NEW	:	75 CIV 68 (DBB)
YORK FISH AND GAME ASSOCIATION, INC.,	:	
LYMAN E. KIPP, RICHARD E. HOMAN, NO	:	AFFIDAVIT IN SUPPORT OF
BOTTOM MARSH and BROWN BROOK,	:	MOTION OF DEFENDANTS,
	:	HERITAGE HILLS OF
Plaintiffs,	:	WESTCHESTER, ET AL.,
	:	(PRIVATE DEFENDANTS) TO
-against-	:	DISMISS COMPLAINT AND
	:	IN OPPOSITION TO
RUSSELL E. TRAIN, et al., and	:	PLAINTIFFS' MOTION FOR
HERITAGE HILLS OF WESTCHESTER,	:	A PRELIMINARY IN-
et al.,	:	JUNCTION
	:	
Defendants.	:	

----- x

STATE OF NEW YORK)	
	:	ss.:
COUNTY OF WESTCHESTER)	

CURTIS MC GANN, being duly sworn, deposes and says:

1. I am one of the private defendants in this action. This affidavit is made in support of the motion of the private defendants hereinafter named to dismiss the complaint herein and also in opposition to the plaintiffs' motion for a temporary injunction. The facts herein set forth relate to both motions, hence, to avoid repetition they are set forth in this one affidavit. The extensive facts and proceedings relating to the subject of this action commenced in early 1972. Within the constraints of time, it is necessary herein to present to the Court from direct knowledge or upon information and belief the history of this matter without sufficient time to obtain affidavits from all the persons directly involved in the many

aspects of the adult condominium development known as Heritage Hills of Westchester hereinafter described. In view of this, counsel for the private defendants has requested the defendant, New York State Department of Environmental Conservation (DEC), to make available and to produce on the hearings before this Court on the private defendants' motion to dismiss the complaint and the plaintiffs' motion for a preliminary injunction the stenographic record and exhibits filed with the Hearing Officer in the application before DEC - Water Supply Application No. 6284 and related stream protection applications, etc. - which contain documentary evidence and sworn testimony relevant and material to the issues before this Court. References will be made to the specific page of the stenographic minutes as to the various points set forth in this affidavit and in the accompanying memoranda in support of the private defendants' motion to dismiss the complaint herein and in opposition to plaintiffs' motion for a temporary injunction.

2. The private defendants in this action are as follows:

- (a) Henry Paparazzo and myself, Curtis McGann, the principals and sponsors of said Heritage Hills of Westchester.
- (b) H & H Land Corp., a New York corporation, with its principal office at Somers, New York,

incorporated on the 28th day of June, 1972,
(A copy of its Certificate of Incorporation
and of the receipt of the Secretary of State
are hereto annexed and marked Exhibit A
and A-1 respectively.)

- (c) Heritage Development Group, Inc., a Connecticut corporation, which duly qualified to do business in the State of New York on the 28th day of January, 1974, whose principal New York office is at Route 202, Somers, New York. (That attached is a copy of the official receipt of the Secretary of State of such filing and marked Exhibit B.)

- (d) Heritage Hills Sewage-Works Corporation, a corporation formed under the Transportation Corporations Law of the State of New York, with its principal office at Route 202, Somers, New York, which was incorporated on the 15th day of February, 1974, a copy of the Certificate of Incorporation having annexed the Consent of the Town Board of the Town of Somers as required under Section 116 of the Transportation Corporations Law and the receipt of the Secretary of State of the filing of said Certificate are annexed and marked Exhibit C and C-1 respectively.

(This corporation as hereinafter mentioned was required to be formed to supply sewage service for the Heritage Hills Sewer District (Section 119 Transportation Corporations Law) and could not be formed until consent was first obtained from the Department of Health of the County of Westchester acting on its own behalf and as agent for the New York State Department of Health, which consent required its prior approval of the maps and specifications of the sewer system.)

- (e) Heritage Hills of Westchester, a New York partnership, comprised of Henry Paparazzo and myself, Curtis McGann, which has its principal office at Route 202, Somers, New York. Annexed hereto is a photocopy of the Certificate of Doing Business filed in the office of the Clerk of the County of Westchester on April 30, 1974, and marked Exhibit D .

Henry Paparazzo and myself, Curtis McGann, are all of the parties constituting the principals, owners and developers of Heritage Hills of Westchester. The legal reasons for the formation of the corporations are hereinafter explained. The private defendants herein, Henry Paparazzo and I are also the shareholders of all authorized, issued and outstanding shares of capital stock of all said corporations.

3. While not having been joined as a defendant in this action, there was also formed in connection with the development of Heritage Hills of Westchester and as required by the Department of Health of the County of Westchester, Heritage Hills Water-Works Corporation, a corporation formed under the Transportation Corporations Law of the State of New York. (This corporation was required to be formed in order to supply under the jurisdiction of the New York State Public Service Commission water to the Heritage Hills Water District. A copy of said Certificate of Incorporation with the annexed Consent of the Town Board and Superintendent of Highways of the Town of Somers, and the receipt of the Secretary of State are annexed and marked Exhibits E and F .)

4. Reference will be made to the Heritage Hills Water District and Heritage Hills Sewer District which identically cover approximately 917 acres, 836 acres of which constitute the initial site of the adult condominium and incidental recreational facilities, etc. While the Town of Somers has been joined in this action as a party defendant, the Water District and Sewer District have not been joined. These districts are entities under the provisions of the New York State Town Law and operate under the jurisdiction of the Town of Somers and the Department of Health of the County of Westchester which also has not been joined as a party defendant herein.

5. The principal plaintiffs in this action are Lyman E. Kipp, who, upon information and belief, is the principal of / plaintiff Sun Enterprises, Ltd. As will hereafter be more fully developed, the plaintiff Kipp is primarily engaged as a gravel operator, who assembled before and after the year 1972, when Heritage Hills of Westchester first came to Somers, parcels of property alleged by him to comprise 534 acres located southerly of Route 202 and the property of Heritage Hills of Westchester. Upon information and belief, the plaintiff Kipp is a resident of Ridgefield Road, North Salem, New York. Before coming to the Town of Somers, Kipp was engaged in the excavating contracting business and was a sand and gravel operator. Upon information and belief, the first two parcels he purchased which are south of Route 202 and on the westerly side of Route 100 were purchased from The Elephant Corporation and Bedford Lake Park Corp. Additional parcels were purchased from other owners. It is historically clear that Bedford Lake Park Corp. and The Elephant Corporation were also engaged in gravel operations. The so-called "Sun Lake" resulted from the removal of a large mound of sand and gravel which existed in the middle of the so-called "wetlands" or "marsh" on the former Elephant Corporation property, a roadway having been constructed across the "marsh" to said mound. Upon information and belief the so-called "wetlands" or "swamp" were not a locale for the propagating or habitat for wildlife but were part of an extensive and intensive gravel mining operation from the days of Kipp's predecessors in title. The

mining of gravel was continued by the plaintiff Kipp. In addition, upon information and belief, Kipp purchased from C & R Realty Corp., the principal whereof was one, Gianetta, additional acreage westerly of The Elephant Corporation and Bedford Lake Park Corporation's properties from which gravel had been removed in substantial quantities. To the south of The Elephant Corporation's and Bedford Lake Park Corporation's property there was additional property from which gravel was removed. That upon information and belief more than 40 acres of property was actively excavated and many hundreds of thousands of cubic yards of gravel have been removed from the assembled parcels and that contrary to the statements in Mr. Kipp's affidavit, the real purpose of the acquisition was to remove the large quantities of sand and gravel and to develop the property for business, commercial and multi-family uses. That annexed to this affidavit and marked Exhibit G is a topographical map prepared by Bibbo Associates, dated April 5, 1971, filed with the Town of Somers which is entitled "Proposed Rezoning". This map is a composite map of some 500 acres comprised of the 216 acres of C & R Realty Corp. property (The Gianetta property which was later purchased by Kipp) and 282.5 acres of Sun Enterprises, Ltd. property (Kipp's corporation). This map shows the proposed rezoning of this approximately 500 acres to office, business, multi-family and neighborhood shopping as thereon indicated. This proposed real estate development by Kipp and his then associate hardly indicates the priority he now gives to the alleged wildlife but rather clearly shows that the property was

bought to extract gravel as a commercial business and then to develop the property for commercial and multi-family purposes. The gravel from the Kipp property was sold to contractors on the construction of Route 684, the Hawthorne Circle and other construction jobs in the vicinity. The private defendants will submit aerial photographs for examination by the Court on the hearing of the motions and in the interim make them available to the plaintiffs. Howard A. Kelly, Jr., who testified on behalf of Kipp before the aforementioned DEC hearing* (1274) was questioned as follows:

"Q. What is the business of Sun Enterprises?

The Witness - As I understand it they own a certain amount of land and Mr. Kipp operates -- has the operation in the gravel -- sand and gravel business."

" By Mr. Blasi

Q. He's a gravel operator, right?

A. Yes."

In addition, in connection with these gravel operations, there were constructed stream crossings in the form of gravel roads

*Numerals in parentheses refer to pages in the official stenographic transcript of the minutes of the hearing by the Hearing Officer for the New York State Department of Environmental Conservation, unless otherwise indicated. Exhibit numbers of the exhibits in said hearing are also included.

across Brown Brook which appear to be five in number on Kipp's property and on the downstream side there is also a reinforced culvert or bridge and a dam 10 to 12 feet in height with a weir across the top and no opening at the bottom of the dam (1274-79, 1284-85; Exh. 46). Mr. Kelly did not know when these various stream crossings were made or whether applications, if any, were made to the Department of Environmental Conservation (1286). His testimony as to the diameter and capacity of the culverts raises a question as to Kipp's concern as to the flooding of the area. From the foregoing, it appears clearly that Kipp purchased these properties to conduct a gravel operation business and after the property paid for itself from the gravel operation, to develop the same for commercial and multi-family purposes. There are located on the property the so-called "Cricket Restaurant" which is a bar and grill, and Kipp's offices and police barracks. In view of the proximity of the Muscoot, Amawalk, Croton and Titicus Lakes owned by the City of New York and the Muscoot Reservation, it is logical that a bait and tackle shop is operated, just as there are others in the vicinity. Kipp seeks to convince this Court that the so-called "Sun Lake" man made from a gravel operation is the major source of fishing activity. It is an untrue picture that the Kipp property is a nature preserve instead of a gravel operation and that Mr. Kipp is a nature lover instead of a gravel operator. The plaintiffs Richard E. Homan and Southern New York Fish and

Game Association, Inc. have been brought into this action to attempt to create environmental questions and to attempt to label Heritage Hills of Westchester as a polluter despite all of the proceedings, permits and protections which have been pursued to the extent of equalling or exceeding all requirements of the authorities concerned. This will be developed further.

6. The development known as Heritage Hills of Westchester projects a development of approximately 3100 condominium units with incidental recreation facilities, recreation areas, golf course, administration building, visitor's center and model center. Heritage Hills of Westchester has been designed following the successful concepts and principles of land use, preserving open areas, providing recreational facilities and constructing first class condominium clustered residences with due regard to the environment. It is the fifth project undertaken by defendant, Henry Paparazzo, since Heritage Village at Southbury, Connecticut, which has won numerous awards for design, environmental consideration and protection and its outstanding architectural features. Among the awards and comments are the following:

1967	Heritage Village First Honor Award in "recognition of an outstanding contribution to Homes for Better Living" American Institute of Architects and American Home Magazine
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- 1970 Heritage Village
Blue Ribbon Award of Honor for
"distinguished multi-family housing
design and development"
Apartment Construction News
- 1971 Heritage Village
Environmental Monthly for "environmental
excellence in architecture and building"
- 1970 Heritage Village
Western Woods Products for "creative
design...and its approach to responsible
use of land in development"
- 1974 Heritage Sound
HUD Sixth Biennial Design Awards
"for superior project design....
exceptional developer-designer concept
for site arrangements that provide
privacy...."
- 1974 Heritage Village
Certificate of Merit
Clean Water Task Force and Beautification
Commission of Southbury, Ct.
- 1974 Heritage Hills
Western Woods Products for "...outstanding
blending of wood products with the
environment and community"
- 1975 Heritage Hills
1974 Decade '70 Awards Program co-sponsored
by National Association of Home Builders
and "Better Homes and Gardens" magazine
for ".... open space and land planning
excellence"
First Honor Winner

In addition to Heritage Village at Southbury, Connecticut, Henry Paparazzo has been the developer of similar outstanding developments at Milford, Connecticut; Essex, Connecticut; and Simsbury, Connecticut.

7. Heritage Hills of Westchester was authorized by the enactment by the Town of Somers on June 29, 1972, of Section 72.02 of its Zoning Ordinance which provides for the creation of a Designed Residential Development (DRD), pursuant to a Special Exception Use Permit which was granted by the Zoning Board of Appeals on November 21, 1972. The project entails a program of construction over a period from seven to nine years in the magnitude of one hundred fifty million dollars. It is recognized as the largest, active housing project under construction in the County of Westchester and represents eleven percent. of all building starts in 1974, and an estimated fifteen percent. of all housing starts in 1975.

8. Prior to the enactment of said Section 72.02 of the Zoning Ordinance of the Town of Somers, the Town entered into extended studies of the proposed enabling amendments permitting designed residential developments and engaged Frederick P. Clark Associates of Rye, New York, Planning and Development Consultants. In consultation and cooperation with the Town and its various boards and agencies, regulations were formulated to provide the creative use of land, the preservation of open areas, the efficient use of land, innovation, flexibility and variety in type, design and layout, and provisions for community, social, recreational, cultural and other service facilities as integral parts of newly constructed residential

communities. This expressed the rationale and the public interest concern of the municipality.

9. This enabling ordinance provided an application procedure involving a three stage process: (1) Board of Appeals public hearing and decision based upon a General Land Use and Development Plan, (2) Planning Board public hearing and decision on any subdivision of land within the DRD; and (3) Planning Board, Town Engineer, Superintendent of Highways and Town Attorney's administrative review of the site development plan, related documents, etc., for each section of a DRD. A prerequisite is that a DRD comprise at least five hundred acres of land having contiguity except for any dividing streets, public or private, on which such tract or any portion thereof had frontage. Heritage Hills of Westchester, the residential condominium area contains approximately 836 acres but additional land making a total of 917 acres was owned by the principals as is herein more fully explained.

10. After following all of the requisite procedures, as aforementioned, on November 21, 1972, a Special Exception Use Permit was issued by the Board of Appeals of the Town of Somers covering Heritage Hills of Westchester. The hearings on the application for the Special Exception Use Permit were held on September 23, 1972, October 5, 1972 and October 21, 1972, before the Zoning Board of Appeals of the Town of Somers. The plaintiff Kipp, who is the principal of the corporate plaintiff,

Sun Enterprises, Ltd., was fully aware of these proceedings and was present in person and by his attorney, William Florence, Esq., and on October 21, 1972 appeared before the Zoning Board and discussed with the Zoning Board the use of Brown Brook and the discharge therein of the treated effluent including the removal of phosphates (a copy of page 237 of the hearing before the Zoning Board of Appeals is annexed and marked Exhibit H). The plaintiffs Kipp and Sun Enterprises, Ltd. did not oppose either the zoning enactments or the issuance of the Special Exception Use Permit which was issued on November 21, 1972, by the Zoning Board of Appeals of the Town of Somers covering the Heritage Hills of Westchester project. No proceeding under Article 78 of the New York CPLR to review the decision of the Board of Appeals as authorized by §267 subd. 7 of the Town Law was instituted within the statutory period set forth therein. Parenthetically, since the DRD ordinance requires a minimum of five hundred acres before application can be made for a special exception use permit, it appears, upon information and belief, the plaintiff Kipp increased his holdings to more than five hundred acres by acquiring additional contiguous property in order to qualify under the DRD. In fact, in Exhibit W annexed to the affidavit of Lyman E. Kipp, his attorney, William Florence, Esq. by letter dated October 11, 1972, to the Zoning Board of Appeals, Town Board and Planning Board advised the Town that the Kipp property would undoubtedly be developed in the very near future and would require the construction of another sewage plant downstream on Brown Brook. It is apparent from the exhibits annexed to the Kipp affidavit that prior to November 21,

1972, the date of the granting of the Special Exception Use Permit, as well as thereafter, that the plaintiffs Kipp and Sun Enterprises, Ltd. had repeatedly presented their objections to the DEC and the EPA regarding the construction of the sewage treatment plant, the discharge into Brown Brook and the nature, quality and quantity of the treated discharge. It is incredible that at this point in time, the plaintiffs Kipp and Sun Enterprises can claim any lack of knowledge or notice in any regard. These plaintiffs participated in every step of the procedures relating to zoning, the water system, sewage system, road systems and practically every detail of construction and as Mr. Kipp states on page 8 of his affidavit, "I personally welcomed the project. It could enhance property value and increase assessable property relieving large land owners of increased taxes".

11. The Town ordinance required the installation by the developer, at developer's own expense, all facilities for water and sewage, interior roads and driveways, drainage, lighting, fire hydrants, etc. and the maintenance of all such interior facilities and the utilities for the water and sewer districts. Succinctly stated there was to be no expense to the Town of Somers for the construction and operation and maintenance of the completed adult condominium community with the added fact that because of the adult oriented conditions there would be no burden on the Town of Somers School District.

12. In order to construct and install a water supply system and a sewerage system, it was necessary to pursue the requisite proceedings before the Federal Environmental Protection Agency (EPA), New York State Department of Environmental Conservation (DEC), the New York State Department of Health, / New York State Public Service Commission, Westchester County Department of Health, New York City Department of Water Resources as well as the Town of Somers, its Engineering department, Superintendent of Highways and other agencies. Heritage Hills of Westchester took all the detailed steps required by Article 12 of the Town Law to form the two districts, water and sewer. Since the Town would not finance the water and sewer utilities, the two aforementioned Transportation corporations (water and sewer) had to be formed but these could not be formed unless the Town consented. The Town could not consent to its incorporation until the plans and specifications of the sewerage system were approved by the Westchester County Department of Health. This presented the problem of the telescoping and overlapping of the jurisdiction of the authorities while a construction sequence had to be observed. Full disclosure was made to all regulatory agencies having jurisdiction of all requisite permits. It was fully disclosed to all agencies that Henry Paparazzo and Curtis McGann were the principals and owners, and that all of the corporations aforementioned were owned by them as the sole shareholders. H & H Land Corp. was required to be formed by the financing

institutions as the record owner of the land title and the primary borrower to meet the then legal requirements as to interest rates, the individuals who are the beneficial owners being the guarantors. Likewise, Heritage Development Group, Inc. (the construction company) is owned by the individuals, Henry Paparazzo and Curtis McGann.

13. Mr. Walter McPhee's firm was engaged as the consulting engineers and they prepared, reviewed and processed with all the agencies concerned the following:

- (a) A water supply report; and
- (b) A wastewater facilities report;

and the necessity of the two transportation corporations being formed, i.e., two utility corporations (water and sewer). The application was filed with the New York State Department of Environmental Conservation (Water Supply Application No. 6284 and an accompanying Stream Protection Application, etc.). The stenographic minutes and exhibits which will be submitted to this Court on the hearing of these motions indicate the detail in which the applicants pursued these applications. The affidavit of Walter McPhee submitted herewith also sets forth the vast amount of study and detail which was presented as to the water and sewer facilities.

14. With the said applications filed on April 26, 1973 the water supply report and exhibits attached were filed together with a copy of a letter from Calvin E. Weber, P.E., Westchester

County Assistant Commissioner of Health for Environmental Services, dated April 24, 1973, wherein Mr. Weber, pending the application and approval by the DEC, consented to the formation of Heritage Hills Water-Works Corporation.

15. Pursuant to notice duly given, J. L. Biggane, Commissioner of the DEC appointed Mr. William J. Dickerson, Jr., Hearing Officer, who proceeded to hold hearings at the Town House at Somers, New York. These hearings were held on September 17, 18 and 19, 1973 and October 2, 3, 4, 5, 9 and 10, 1973. As herein mentioned, the entire file including minutes (1524 pages) and exhibits will be submitted to the Court. The appearances noted on pages 2, 3 and 3a clearly indicate William J. Florence, Esq. appeared for the plaintiffs herein, Sun Enterprises, Ltd. and Kipp. It is important to note that seven representatives of the DEC personally appeared, including the Regional Attorney, the Regional Supervisor of Environmental Analysis Unit (Region III) and his associate from the Regional Environmental Analysis Unit, as well as the representative from the Albany office of the DEC Environmental Analysis Unit. There also were present Calvin E. Weber, Assistant Commissioner of Health for Environmental Services of the Westchester County Department of Health who appeared also for the New York State Department of Health, and his counsel, E. Sherwood Alexander, Deputy County Attorney. It is also important to note that the

City of New York was represented by Louis L. Walters, Esq., Assistant Corporation Counsel, John P. Egan, Director of Water Quality, New York City Department of Water Resources and John Spyropoulos, his assistant. I testified at length (62-236) describing the details of the Heritage Hills of Westchester project, including an explanation of the relationship of the principals to the water-works corporation and the sewage-works corporation. In addition, an explanation of the relationship was made by our attorney, (95-99) in response to questions from counsel for the DEC. My testimony included an explanation of the financing of the project. Mr. Walter McPhee explained in detail the water system and the sewage system and the wastewater facility report (Exhibit 21) was received in evidence. Mr. McPhee was cross-examined by Mr. Florence, counsel for the plaintiffs, Kipp and Sun Enterprises, Ltd., as to the details of the wastewater facilities, the quality, quantity and nature of the discharge into Brown Brook. From the beginning of the DEC hearing, Mr. Florence also went into details as to the location of the plant, the relocation of Brown Brook, the location of the outfall structure and questioned at length as to the discharge. This questioning is scattered throughout the entire 1,524 pages of minutes. Mr. McPhee was also examined as to the sewage plant and treatment by Messrs. Danskin, Manna and DEC Counsel Vazzano. Mr. McPhee was also cross-examined at length on the nature and quality of the treated wastewater by a citizen, Mr. Richard Oehler (472-496). All this extensive examination,

cross-examination, redirect and re-cross relating to the treatment of the wastewater and its discharge into Brown Brook continued during the sessions at the hearings before Mr. Dickerson, on September 17, 18, 19 and October 2, 3 and 4, 1973.

At the October 4, 1973 hearing Mr. Florence made two requests of the Hearing Officer; the first being a motion that the current hearing be adjourned, and the second, that a new notice of hearing be published and the hearing continue in an expanded fashion to encompass Chapter 801 of the Laws of 1973, otherwise known as SPDES (1151-81). The Hearing Officer deferred making any rulings in order that he might consult with the Commissioner of the DEC. On October 5, the motions by Mr. Florence were denied. Mr. Dickerson made it very clear that as to the second request "I can no way guarantee that a hearing will be held or will not be held" (1182-83). However, from then on with the widest possible latitude, Mr. Dickerson accepted all the testimony that was proffered by the plaintiffs, Kipp and Sun, over the continuing objection of counsel for Heritage Hills of Westchester, the Private Defendants herein. That testimony was presented by the following experts:

Howard A. Kelly, Jr., (1215-1314);
Eric R. Gidlund, (1315-1402);
Raul R. Cardenas, (1403-1488).

The testimony of those experts related to the quality, quantity, and nature of the discharge to Brown Brook. It should be noted that the aforementioned experts are also the plaintiffs' affiants

in this action, and that in the course of his testimony before Mr. Dickerson, Cardenas drew liberally on studies previously made by Alan H. Moloff and Guenther Stotsky, who are also plaintiffs' affiants in this action. Cardenas, Moloff, Gidlund, and Stotsky are associates in a consultant firm incorporated "the day before" Gidlund gave his testimony (1384). Aside by Mr. Florence, Cardenas, Gidlund and Kelly were examined extensively by the representatives of the DEC and the Westchester County Department of Health. Maps and photographs of the Sun property were submitted as exhibits. Mr. Dickerson inspected the Sun property, and in his Report made specific reference to the Kipp objections, and specifically to the sewage effluent, stating:

" Mr. Lyman Kipp filed objections to the project contending that the sewage effluent from the proposed sewage treatment plant and sewage effluent discharge structure and storm water drainage from the project would have detrimental effects to his property due to the quality and quantity of the effluent."

In his FINDINGS, page 5, paragraph 22, the examiner stated:

"22. The proposed sewage treatment will consist of: comminution or grinding of the sewage, extended aeration which will remove carbonaceous and nitrogenous BOD (Biochemical oxygen demand) and will precipitate phosphates, clarification, sand filtration, chlorination to provide disinfection and post-aeration. This treatment plant will be designed to produce an effluent having a biochemical oxygen demand of 5 milligrams per liter or less, a free ammonia content measured as nitrogen of 2 milligrams per liter or less, a dissolved oxygen content of 7 milligrams per liter or more and an average phosphate content measured as phosphorous of 0.5 milligrams per liter or less. This effluent will meet the water quality standards for streams classified as AA(T) which are the highest stream standards." (Underscoring supplied)

In paragraphs 24, 25 and 26, the examiner stated:

"24. The analyses of water from Brown Brook indicate a pattern of eutrophication normal for the region, and while the stream is moderately enriched, it cannot be considered polluted. Both the nitrogen and phosphorous levels existing in the stream are higher than the amounts which were stated to be necessary to sustain and encourage algae growth in lakes or standing bodies of water. There is no evidence to indicate whether nitrates or phosphates are the limiting nutrients with respect to the eutrophication in Brown Brook."

"25. There are no unique fishery or ecological resources associated with Brown Brook in the immediate vicinity of the proposed project. The lands adjacent to Brown Brook downstream of the site of the proposed effluent discharge structure have been used in the past for the mining of gravel. The proposed point of discharge is approximately 1.75 miles upstream of the Muscoot Reservoir of the City of New York." (Underscoring supplied)

"26. The addition of the sewage effluent to the normal flow of Brown Brook will not cause flows which have velocities in excess of the scour velocities. The average flow in Brown Brook is indeterminate because of a lack of data, but the mean flow has been estimated to be approximately one cubic foot per second."

With relation to these findings upon the Kipp and Sun objections, the relevant conclusion of the examiner appears on page 7 of his report and reads as follows:

"2. The quality of the discharge to Brown Brook will not result in any unnecessary or unreasonable degradation of the stream within the meaning of the Rules and Regulations for the Use and Protection of Waters (Part 608, NYCRR) but the Applicants will be required to comply with the applicable provisions of Article 17 of the Environmental Conservation Law and the applicable provisions of the Federal Water Pollution Control Act Amendments of 1972 (PL 92-500)."

The Decision of the Commissioner of DEC was issued January 17, 1974, and adopted the Report of the Hearing Officer including recommended Findings, Conditions and Determinations. A copy of the Decision with the examiner's Report was furnished to all participants including Kipp and Sun. A copy of said Decision is attached and marked Exhibit I. No proceeding for a review under Article 78 of the CPLR was commenced which is permitted by Section 15-0905 of the New York State Environmental Conservation Law. In fact, though plaintiffs, Kipp and Sun, commenced a voluminous correspondence with the DEC and the EPA which lasted through nine months of 1974, no action was taken until August 26th of that year when an Order to Show Cause signed by a Justice of the Supreme Court, Westchester County, was served on DEC, "Why an order should not be entered requiring the respondent to hold hearings under Article 17 Title 8" [SPDES Law]. For reasons unknown to the Private Defendants herein that proceeding was discontinued by plaintiffs, Kipp and Sun. After an hiatus of four months the summons and complaint and accompanying motion papers for a temporary injunction in this action were served on the Private Defendants (January 10, 1975).

16. In the interim throughout 1974, the Private Defendants proceeded with their applications for the NPDES and SPDES permits and the requisite approvals of the New York State Department of Health, the Westchester County Department of Health, the New York City Department of Water Resources, the New York State Public Service Commission, the New York State Department of Transportation, the Attorney General of the State

of New York (with relation to the offering prospectus), the Town Engineer of the Town of Somers, and the Building Department of the Town of Somers; resulting in the issuance of all the necessary permits and approvals and certificates of compliance and of occupancy. The physical construction of facilities and permanent improvements proceeded accordingly.

17. Up to January 31, 1975, the Private Defendants have expended approximately \$22,900,000.00 on the Heritage Hills of Westchester project. Of this amount \$14,300,000.00 was expended from January 1, 1974 to January 31, 1975. Taking the date of the issuance of the NPDES permit, July 12, 1974 to January 31, 1975, approximately \$10,000,000.00 was expended by the Private Defendants.

18. During the regular construction season a total of 364 employees are engaged in the project. One-half of this number represent the employees of subcontractors. The total payroll is estimated at \$470,000.00 per month.

19. At the present time, there are three condominium complexes under construction. As to Condominium No. 1 comprising 115 dwelling units, 113 are ready for occupancy, 41 have been sold and 7 have closed, 15 are 90% complete (requiring only painting, cabinets and minor interior details). As to Condominium No. 2 comprising 113 units, 82 units have been framed in, the foundations for all remaining units have been completed. As to Condominium No. 3, excavation and foundations

have been installed and backfilled for 41 units. A total of 209 dwelling units are completed or under construction.

20. As of January 31, 1975, title to units were conveyed to seven buyers with corresponding occupancy; contracts for the sale of 41 units have been signed and closings are scheduled in the following sixty days; presently 366 prospective buyers have made deposits and have or are in the process of selecting the units desired. It is estimated that 75 of these prospective buyers will select their units and close title in the next 90 days.

21. As of January 31, 1975, borrowing has totaled \$18,500,000.00. Proceeds generating from the sale of units are being reinvested in the project until such time as the basic costs of the project have been recovered and thereafter are to be applied to retire the outstanding loans.

22. The preliminary injunction sought herein by plaintiffs Kipp and Sun if granted will destroy Heritage Hills of Westchester and these plaintiffs are well aware of this. Plaintiff Kipp tried to sell the present Sun property to the Private Defendants. In fact, this was prior to Kipp's acquiring the aforementioned Gianetta property in an attempt to make a joint sale at a price which was wildly in excess of the then going market. When he was refused, he became vindictive toward these Private Defendants. Upon information and belief Kipp in 1972 embarked on a plan to compel the Private Defendants to buy

his property or suffer the consequences of protracted tactics of harassment; and "drive him (Paparazzo) into the ground".

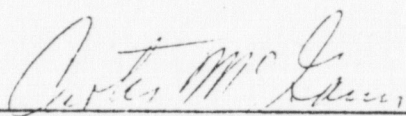
The granting of a preliminary injunction will result in bringing the project to a halt since the resulting publicity will frighten prospective buyers, and cause the intervention of the New York Attorney General to direct the revision of the offering prospectus. Numerous employees will be laid off. The investment of millions of dollars will be imperiled with resulting loss to the depositors and persons who are investors in the lending institutions

/presently financing the project, as well as these Private Defendants. The investment of the purchasers of the condominium units as well as their use and occupancy thereof will be seriously jeopardized. The validity of the Building Permits and Certificates of Occupancy that have been issued, will be questioned. The Town of Somers encouraged the construction of Heritage Hills of Westchester because it recognized the real estate tax resource it is and will be. If the project is halted revenue to the Town of Somers will necessarily halt and certiorari proceedings to reduce assessed valuations must follow. The items of serious if not fatal irreparable damage are obviously too numerous to set forth. When this is compared to the speculative, ethereal, unfounded claims of the plaintiffs Kipp and Sun, equity clearly dictates that no preliminary injunction should be granted. The granting of a preliminary injunction would be tantamount to destroying more than two years of the work of the Private Defendants, and will be a repudiation of all the studies, reviews, inspections, reports, findings,

determinations, and decisions made by all the regulatory agencies, Federal, State, County and Town, including the City of New York, and the permits that have been issued.

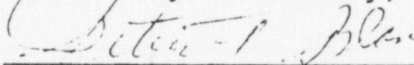
23. On the record before this court, the plaintiffs Kipp and Sun have not sustained the burden of establishing the probability of success in this action. The balance of the equities is preponderantly in favor of the Private Defendants.

24. The plaintiffs are guilty of laches. They stood idly by and permitted the statutes of limitation, Federal and State, to expire. These Private Defendants, relying on the official permits and approvals that have been issued, have proceeded with the construction of a multi million dollar development, the completion of community water and sewer facilities, permitted the sale to the public of much needed housing units and the assumption of obligations and liabilities of millions of dollars. The motion to dismiss the complaint should be granted and the plaintiffs' application for a preliminary injunction should be denied together with costs, disbursements and reasonable attorneys' fees.

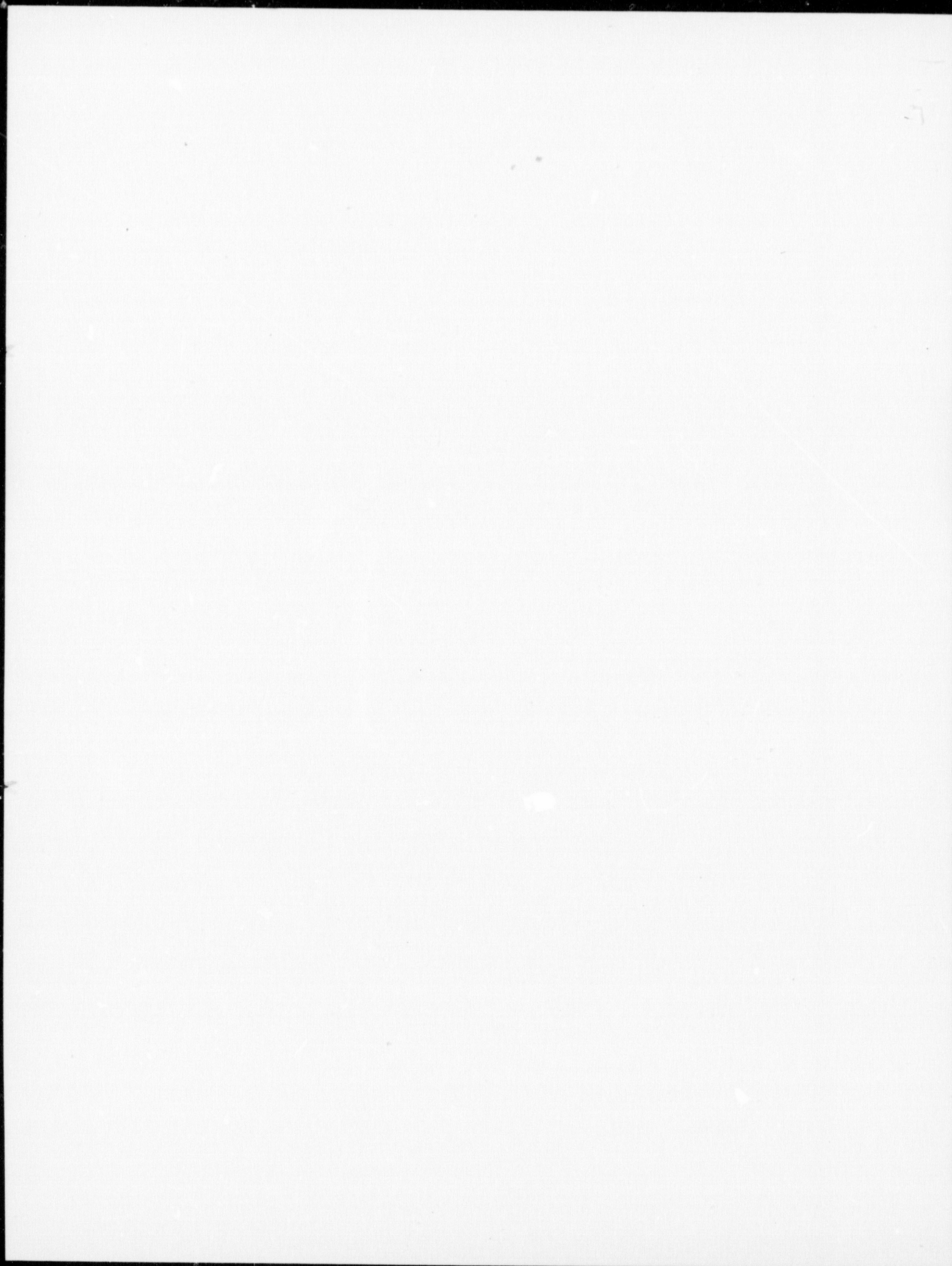

Curtis McGann

Sworn to before me this

13th day of February, 1975.



PETER F. BLASI
Notary Public, State of New York
No. 60-533625
Qualified in Westchester County
Commission Expires March 10, 1976



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SUN ENTERPRISES, LTD., SOUTHERN NEW YORK FISH AND GAME ASSOCIATION, INC., LYMAN E. KIPP, RICHARD E. HOMAN, NO BOTTOM MARSH and BROWN BROOK,	:	AFFIDAVIT IN SUPPORT OF MOTION OF DEFENDANTS, HERITAGE HILLS OF WESTCHESTER, ET AL., (PRIVATE DEFENDANTS) TO DISMISS COMPLAINT AND IN OPPOSITION TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION
Plaintiffs,	:	
-against-	:	
RUSSELL E. TRAIN, et al., and HERITAGE HILLS OF WESTCHESTER, et al.,	:	75 CIV 68 (DBB)
Defendants.	:	

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STATE OF NEW YORK)
 : ss.:
COUNTY OF WESTCHESTER)

LEONARD J. BIBBO, being duly sworn, deposes and says:

1. I am a Civil Engineer, licensed in the State of New York as a professional engineer, with offices at Golden's Bridge, New York, practicing under the firm name of Bibbo Associates. I am a graduate of Manhattan College B.C.E. 1953. I received my professional license in October 1958. From 1953-1957, I was Field Engineer for the firm of Howard, Needles, Tammen and Bergendoff, New York, N.Y., working on major highway projects including the analysis and design of drainage systems. Thereafter, I was associated with the firm of Gibbs and Hill, Nanuet, N.Y. From 1958 to 1963, I was associated with the firm of Herman Dorfman Associates, New York, N.Y. engaged in the Cross Westchester Expressway Project as Ass't. Project Engineer and thereafter as Engineer-in-Charge of the reconstruction of Route

22 between Golden's Bridge and Croton Falls. In 1963 I formed Bibbo Associates entering the private practice of professional engineering. I have been a Consulting Engineer for the Towns of Somers, Lewisboro and North Salem in Westchester County. I am currently Town Engineer and Planning Consultant for the Town of Patterson, Putnam County, N.Y. I have acted as consulting engineer designing grading, utility and storm drainage plans for various projects.

2. From in or about March 1973, my firm has acted as consulting site engineers for the project known as Heritage Hills of Westchester and is presently so acting. We have designed the grading, utility and storm drainage plans and structures for this project. I have conducted personal site inspections for all of said work and in particular inspected each portion of work for which any permit was required by the New York State Department of Environmental Conservation (DEC). From the time each phase of this project was conceived prior to formulating actual design plans and at the time each permit was issued, construction started and completed, I or one of my associates have maintained a weekly communication with DEC. At my invitation we have had Mr. Robert Jonas of the United States Soil Conservation Service visit the site of Heritage Hills of Westchester on at least three occasions. We have maintained communication with Mr. Jonas personally or by telephone regarding this project. In addition, we have been in communication with

William Marcon, P.E., Consulting Engineer of the Town of Somers who is charged with inspections of the project site as required under the approvals by the Planning Board and Board of Appeals of the Town of Somers.

3. From the time we were engaged and consistently from time to time during the period from March 1973, to-date we have made site inspections and directed and supervised measures for the control and forestalling of possible siltation, and particularly with respect to the items relating to stream protection. Not only have we been in communication with DEC, but we have pursued the recognized practices required for erosion and siltation control. Mr. Robert Jonas was of particular assistance in aiding and guiding us in erosion control. Through his interest, I was invited to attend a joint meeting of representatives of the United States Soil Conservation Service and of DEC, held in Albany for the purpose of studying problems relating to ponds and streams.

4. In the matter of the relocation of Brown Brook, the permits required as conditions the grading, topsoiling and seeding of the stream beds and there was also required jute matting along the banks and placement of hay bales for siltation control. Not only was this done but in addition hay mulch was placed on the banks prior to the matting and four to six inches of crushed stone were placed on the stream bottom all as extra precautionary measures. This work was cited to me by the DEC

as an exemplary method of stream relocation.

5. All other work has been handled in the same careful fashion. As to the road on the project site which crosses Brown Brook, the culvert that was used was not placed in the stream bed since this might disturb the bed. Instead a half-arch pipe was used to span the stream by five feet either side of the stream banks so as to prevent damage to the stream.

6. There were a few instances where an equipment operator acted contrary to instructions given by me or the supervisory personnel at Heritage. Where siltation was threatened the situation was corrected, and control and corrective measures taken to prevent reoccurrences. In a project of this size, some workman or laborer can inadvertently or through misunderstanding of language commence to do something incorrectly. In any such instance, directions were given immediately to change or to correct the procedure. Roads have been graded and seeded. Where this was not immediately possible, sedimentation control measures were instituted. Housing units have been sodded at disturbed areas. I can state without equivocation that in the more than twenty years I have practiced engineering, I know of no other project, private or municipal, where the builders and key personnel have taken such direct interest in conservation and in erosion and siltation control.

7. On January 28, 1975, my partner, John P. McNamara, P.E., at my request, took soil samples in the so-called

Port Saia pond (this is the pond located north of Route 202 and westerly of Warren Street into which Brown Brook flows) and in the Somers Fire Department Pond (south of Route 202 into which Brown Brook flows), in order to determine whether any silt had been deposited therein and, if so, the quantity thereof. There was no recoverable silt in either pond. The leaves in the pond bottoms were carefully examined. They had a skim coat of approximately 1/16th of an inch in thickness. This indicated that at these points there was no siltation of any consequence, and furthermore that the likelihood of siltation further south was nil. No silt has ever been physically removed from this pond by Heritage Hills.

8. I have personal direct knowledge, not only of the Kipp and Sun property, but of all properties within the drainage basin south of Route 202. We have made planning studies of those lands and I personally examined those lands prior to any excavation made by Sun and previous owners. As previously stated I was the Engineer-in-Charge of construction for the relocating of Route 22 (1960-1963). I was present when soil tests were taken in the swampy land named by the plaintiffs "no bottom marsh" which was then owned by The Elephant Corporation. Gravel was excavated from the swamp and transported to Route 22 for construction use. As a result there was created a pond of approximately five acres. Subsequently, Sun purchased the property and enlarged the pond by further excavating gravel.

Plans for such excavation were prepared by my office for Sun obtaining the necessary permit. In now reviewing that permit, I discovered that the actual excavation was not in accord with the submitted plan. The primary purpose of the lake excavation was to extract and sell the gravel. It is now apparent that the reason for deviating from the submitted plans was to pursue and extract the strata of sand and gravel beyond the original plan. This procedure is wholly inconsistent with the declared intention of developing ground water sources which are subject to DEC and Westchester County Health Department's analysis and permits. Apparently, no such permits have ever been applied for or issued. Aside from such lake excavation, to my knowledge of the property and area, Sun has excavated sand and gravel for an additional approximately 49 acres on land to the south of the so-called lake. This material was supplied to Ottaviano Construction Corp., Savin Brothers and Yonkers Contracting Corp. for use in constructing Interstate 684 and other work. Savin Brothers was also constructing the Hawthorne Circle.

9. In addition, my office prepared plans for Sun Enterprises and C & R Realty for a request by them to the Town of Somers for a rezoning of their lands to commercial and multi-family uses. These plans were presented by me to the Town Board and Planning Board of Somers and are a part of the Town files. Although I presented these plans on behalf of the owners,

in August of 1972 it became apparent to me and to my partner from conversations with the owners that they intended to use the plans only as a means to promote the sale of their properties. We, thereupon, terminated our relationship.

10. I have read the affidavit of the plaintiff, Lyman E. Kipp, sworn to the 20th day of December, 1974. It is my observation and opinion that the claim of siltation in the Sun property is attributable to Heritage Hills of Westchester is without basis. As aforementioned, no silt of any consequence was found in the aforementioned two upstream ponds, Port-Saia and Firemen's pond. If any siltation has occurred on the Sun property, it would most likely occur from operations on the Sun Enterprises property. In my opinion based on my observations consistent and constant efforts have been employed by Heritage Hills to control siltation and these efforts have been effective. This is confirmed by the letter report dated January 22, 1975, by William A. Marcon, Consulting Engineer of the Town of Somers to Sun Enterprises, Ltd. after a field inspection made by Mr. Marcon on January 11, 1975, at the request of Lyman Kipp; a certified copy of which is submitted herewith, annexed to this affidavit and marked Exhibit "A".

11. The rechanneling of the stream bed of Brown Brook was a simple realignment of that brook and could not be the

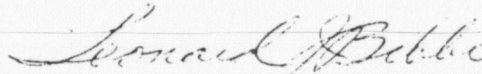
cause of flooding. The existing box culvert under Warren Street is not capable of permitting large flows and if flooding occurred, it would occur on the property of Heritage Hills of Westchester. The existing Warren Street culvert is reversed in pitch and is capable of approximately 25 cfs. The self flooding plan was used in the creation of the lake in the model area of Heritage Hills when the entry road was designed and built. A very small culvert (11" x 18") was installed for storm water overflow from this pond prior to its construction. This culvert was placed at a higher elevation than the normal pond level so that during a storm, the pond level would rise storing excess water and only a small portion (10^{\pm} cfs) would be allowed to exit at any time. Any claim attributing flooding on the Sun property pond to the construction is completely without basis. The approved designs were made to reduce the effect of run-off to a point less than could have occurred prior to construction.

12. With respect to the allegation made by Mr. Kipp that the so-called "Sun Lake" is a spring fed lake, the same is not true. It is not a spring fed pond or lake but solely the result of high water table.

13. In my numerous inspections of Brown Brook I have never observed oils or other construction waste in the brook at any point before said brook enters the Sun property. However, the Sun property adjacent to portions of Brown Brook near Route

100 is used by Sun for the storage of equipment such as trucks, bulldozers, construction equipment, etc. and for a maintenance yard. Fuels and oils are also stored there.

14. With reference to the so-called Connecticut precedent stated in the affidavit of Nicholas Robinson at paragraph 76 the allegation was made that the sewage treatment plant at Heritage Village in Southbury, Connecticut, was faulty in design and operation. This same charge was raised about the time the hearings were proceeding before the DEC Hearing Officer in September-October 1973. At my firm's request, the Department of Environmental Protection of the State of Connecticut stated its views on the subject of the Heritage Village sewage treatment plant which clearly establishes that the plant meets all operational standards of the State of Connecticut and explains that the allegations of pollution were not attributable to the plant but to the presence of ducks on ponds in the area. A copy of this communication is annexed and marked Exhibit "B".



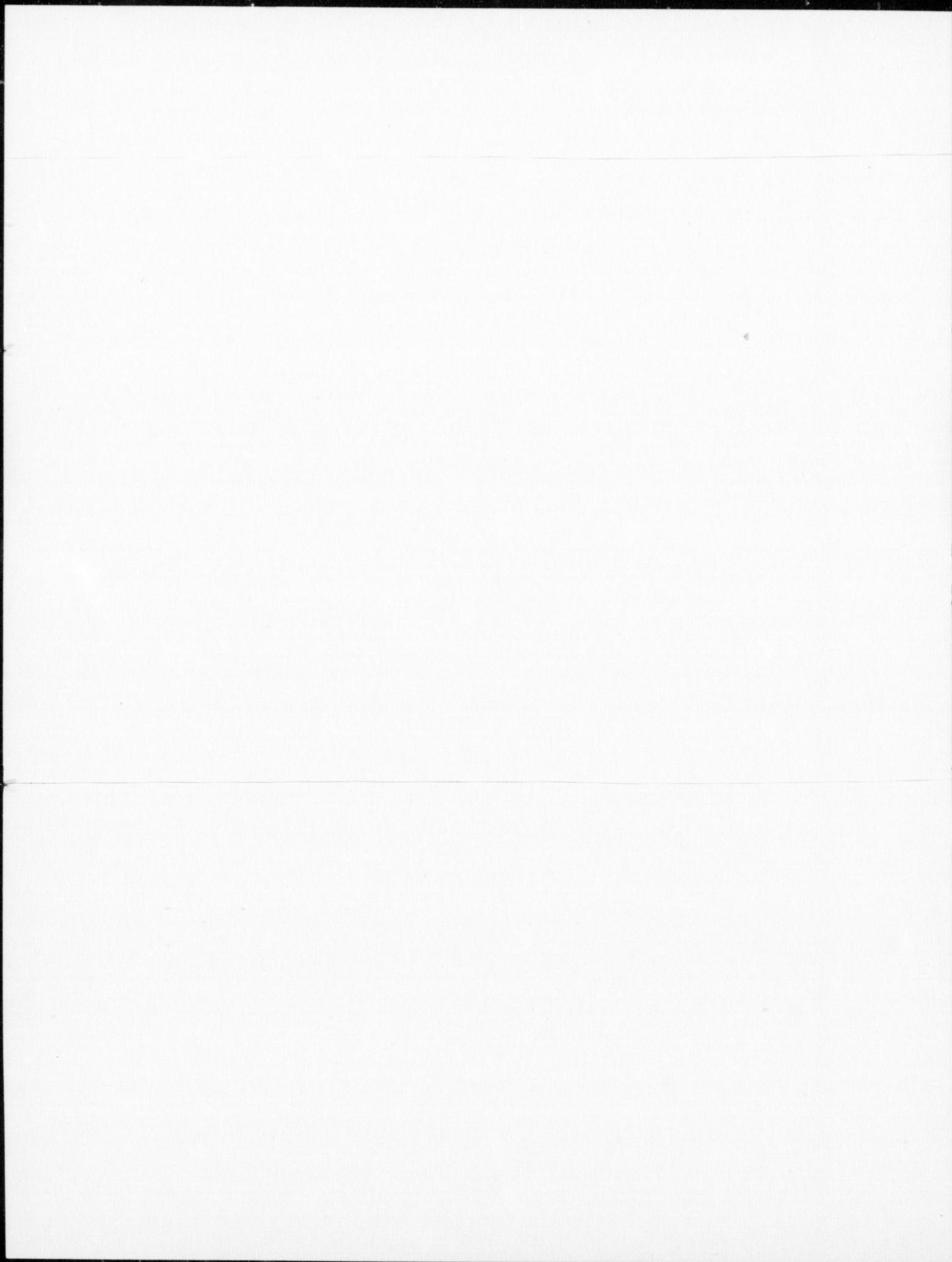
Leonard J. Bibbo

Sworn to before me this

13th day of February, 1974.



PETER F. BLASI
Notary Public, State of New York
No. 60-5339325
Qualified in Westchester County
Commission Expires March 30, 1976



State of New York

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Water Supply Application No. 6284

Stream Protection Applications
Nos. 360-24-0051 (SP85) and (SP86)

In the Matter of the Applications

- of -

HENRY PAPARAZZO and CURTIS MCGANN

for the approval of their acquisition
of a source of water supply and their
financial and engineering plans for
the construction of a water supply
system, the construction of a dam,
and a sewage effluent discharge
structure and for the relocation of
a stream.

D E C I S I O N

Application filed	April 27, 1973
Hearing held in Somers	September 17, 18 and 19, 1973 October 2, 3, 4, 5, 9 and 10, 1973
Decision	January 17, 1974

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State of New York

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Water Supply Application No. 6284

Stream Protection Applications
Nos. 360-24-0051 (SP85) and (SP86)

In the Matter of the Applications

- of -

HENRY PAPARAZZO and CURTIS McGANN
(Heritage Hills of Westchester)

Report of
William J. Dickerson, Jr.
Hearing Officer

I, William J. Dickerson, Jr., hereby
submit this hearing officer's report
including recommended Findings and
Determinations.

Dated: Albany, New York
January 11, 1974


William J. Dickerson, Jr.
Hearing Officer

PROCEEDINGS

Henry Peparazzo and Curtis McGann (the "Applicants") made application to the Department of Environmental Conservation (the "Department") on April 26, 1973, for approval of their acquisition of a source of water supply by the construction of wells and for their plans to install a complete water supply and distribution system for water service to a planned residential community known as "Heritage Hills of Westchester" in the Town of Somers, Westchester County. This application was filed in the office of the Department on April 27, 1973. Two applications were filed on July 12, 1973, involving an unnamed tributary of the New Croton (Muscoot) Reservoir, known locally as Brown Brook, which has been designated as Stream H-31-P44-18 in the New York State Stream Classification System. Stream Protection Application No. 360-24-0051 (SP85) covers relocation of approximately 650 feet of stream channel and construction of a sewage effluent discharge structure. Stream Protection Application No. 360-24-0051 (SP 86) requests a permit to construct a dam approximately 21 feet high to form a pond having a surface area of approximately 1.6 acres.

After due notice was published in the Northern Westchester Edition of The Reporter Dispatch on August 23 and 30, 1973, the hearing on this application was held before William J. Dickerson, Jr., in the Town Hall of the Town of Somers on September 17, 1973, at 1:00 o'clock in the afternoon, continued pursuant to adjournments duly taken on September 18 and 19, 1973, October 2, 3, 4, 5, 9 and 10, 1973, and was concluded upon receipt of closing memoranda on October 19, 1973. At this hearing the Department reviewed the applications, maps and plans submitted, examined witnesses and heard arguments in favor of and in opposition to approval of the project, all as shown by the stenographic record. The Applicants were represented at the hearing by Peter F. Blasi, Esq. The Department was represented by John Hanna, Jr., Esq., Deputy Commissioner and General Counsel (Nicholas S. Vazzana, Esq., of Counsel). Objections were filed by the New York State Department of Health, the Westchester County Health Department, the City of New York, Mr. and Mrs. Ralph E. Bahret, Mr. and Mrs. Anthony Saia, Mr. Lyman E. Kipp as President of Sun Enterprises, Ltd., Dr. and Mrs. George E. Port, and the Somers Volunteer Fire Department. The Westchester County Health Department was represented at the hearing by F. Sherwood Alexander, Esq., and Calvin E. Weber, P.E., Assistant Commissioner of Health for Environmental Services. The City of New York was represented by Norman Redlich, Esq., Corporation Counsel (Louis L. Walters, Esq., of Counsel). Mr. Lyman E. Kipp was represented by William J. Florence, Jr., Esq. The Somers Volunteer Fire Department was represented by Albert F. Mally, Esq., Mr. and Mrs. Ralph E. Bahret, Mrs. Anthony Saia, and Dr. and Mrs. George E. Port appeared at the hearing. A notice of appearance was filed by Mr. Richard R. Oehler who appeared at the hearing. Mrs. Theodore P. Daly, Mrs. Cecilia Eustance, Mrs. David Rauch, Mrs. Jerry Nardelli, Mrs. Edward Goldman and Mrs. Peter Robertin appeared at the hearing with the consent of the Applicants for the limited purpose of opposing the stream protection applications.

SUMMARY OF APPLICATIONS

The Applicants now propose to acquire a source of water supply by the construction of two or three wells and to construct a water supply system including chlorination facilities, pumping stations, a one million gallon

storage tank and a distribution system consisting of 8-inch and 10-inch diameter cast iron mains, complete with valves, appurtenances and hydrants. The Applicants propose to construct a dam approximately 21 feet high to form a pond having a surface area of approximately 1.6 acres, to relocate approximately 650 feet of stream in order to build a sewage treatment plant and to build a sewage effluent discharge structure.

SUMMARY OF OBJECTIONS

The New York State Department of Health and the Westchester County Health Department filed objections to this application on grounds that the water quantity available to the project is inadequate, that water quality data was not available and that the possibility of a joint system with nearby communities and/or using New York City water had not been investigated.

The objections of the New York State Department of Health were withdrawn in a letter dated September 14, 1973, which was received by the Department on September 19, 1973. The Westchester County Health Department withdrew, at the hearing, their objections concerning the quality and quantity of the water.

✓✓ The City of New York filed objections on the grounds that the City had not approved plans for the construction of sewage facilities, and that the Applicants had failed to furnish guarantees, bonds and securities to insure the continued maintenance and operation of the sewage system.

✓✓✓ Mr. Lyman Kipp filed objections to the project contending that the sewage effluent from the proposed sewage treatment plant and sewage effluent discharge structure and storm water drainage from the project would have detrimental effects to his property due to the quality and quantity of the effluent.

✓✓✓ The Somers Volunteer Fire Department objected to the construction of the sewage effluent discharge structure and the relocation of the stream on the grounds that the pond on their property downstream of the project will be damaged by pollution and contamination from the sewage effluent and by the depositing of silt and other materials into the pond.

✓✓ Mr. and Mrs. Ralph E. Bakret filed objections alleging that the proposed development would endanger their water supply and that the location of the sewage treatment plant will decrease the value of the property.

✓✓ Mr. and Mrs. Anthony Saia and Dr. and Mrs. George E. Port filed objections to the project alleging that the proposed water supply would endanger their well, that the location of the sewage treatment plant will have an adverse effect on the value of their property and that the proposed construction of the dam and relocation of the stream will damage their pond.

Mr. Richard Oehler, who filed a notice of appearance, opposed those portions of the project that have to do with the location of wells and the location of the sewage treatment plant. ✓

Mrs. Theodore P. Daly, who appeared at the hearing, opposed to any disturbance of the natural stream and Mrs. Cecilia Eustance, who appeared at the hearing, opposed to the proposed well supply and sewage treatment plant location. Mrs. David Fench, Mrs. Jerry Nardelli and Mrs. Edward Goldman were opposed to the location of the sewage treatment plant. ✓

ONLY COPY AVAILABLE

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After due study of the petition and its exhibits and of the evidence and arguments given at the hearing, I recommend that the Department of Environmental Conservation find as follows:

FINDINGS

1. The Applicants are general partners in a project to construct a designed residential development over a period of seven to nine years. This condominium complex, known as Heritage Hills of Westchester, is located in the Town of Somers, Westchester County. A designed residential development is the term used for planned developments in the Town of Somers zoning ordinance.

2. H & H Land Corporation, a corporation organized under the laws of this State and having its principal office at Route 100, Somers, New York, is the owner of 917.670 acres of land in the Town of Somers, Westchester County. H & H Land Corporation is the holder of title of the property in trust for the beneficial owners who are the Applicants.

3. The lands of the Applicants lie generally northwest of the hamlet of Somers, north of U. S. Highway Route 202 and west of the combined New York State Highway Route 100 and U. S. Highway Route 202. The land elevations within the area vary from approximately 250 to approximately 750 feet above sea level. The site is generally rolling, unimproved second growth woodland.

4. The Applicants propose to construct approximately 3100 residential units and related community oriented facilities on 836 acres of land. Each residential building will contain between 2 and 6 individual dwelling units. The residential buildings will be grouped into approximately 18 to 25 separate condominiums. In addition to the residences, a 27-hole golf course, swimming pools, tennis courts, paddle tennis courts, auditorium facilities, men's and women's clubs and meeting rooms will be constructed within the area which had been designated as a Designed Residential Development (D.R.D.) by the Zoning Board of Appeals of the Town of Somers on November 21, 1972. The remaining 81.7 acres owned by the Applicants are not part of the D. R. D.

ZBA Permit

5. The Town Board of the Town of Somers established the Heritage Hills Water District on May 16, 1973, but has no plans for providing water service in the foreseeable future. The construction of the water system within this district will be carried out by the Heritage Hills Water-Works Corporation (see Finding No. 6 below) at no cost to the Town and the facilities will be retained by the private company. The waterworks corporation will be responsible for providing water service in the development.

6. The Applicants have formed the Heritage Hills Water-Works Corporation pursuant to Section 3 of the Transportation Corporations Law of the State of New York. The certificate of incorporation for this corporation, filed in the office of the Secretary of State of the State of New York on May 11, 1973, shows that the service area of the company is the same as the area contained in the Heritage Hills Water District.

7. The Town Board of the Town of Somers established the Heritage Hills Sewer District on May 16, 1973. The area within the boundaries of this district is the same as the area contained within the Heritage Hills Water District. The Applicants plan to form a sewage company to construct and operate the sewage system within the Heritage Hills Sewage District at no cost to the Town when the required approvals have been obtained.

8. There is a need in northern Westchester County for additional housing. ✓✓ The ultimate population in the condominium complex will be 5580 persons based on the age restrictions to be involved. At least one person in each dwelling unit must be at least 40 years of age or older and no children under the age of 18 may permanently dwell within the project. The estimated average daily water demand for potable water in the total project is 602,000 gallons per day and the estimated peak demand is 730,000 gallons per day. There are no public water supplies available in the immediate vicinity of the project. The Delaware Aqueduct of the New York City water supply system passes within 0.3 miles of the site of the project but only municipal corporations or water districts may take a supply of water from this source. The use of the aqueduct as a source of water for this project would require a substantial additional expense for a transmission main and proper treatment facilities.

9. Three test wells have been drilled on a parcel of land containing approximately 100 acres in the eastern portion of the Applicants' property adjacent to and west of the combined U. S. Highway Route 202 and New York State Highway Route 100. The three test wells were reported at the hearing to have a combined yield of 731 gallons per minute when pumped simultaneously during a 48 hour pump test. The safe yield of the aquifer has been estimated by the Applicants' engineer as being in excess of 550 gallons per minute.

10. Based on boring information, the aquifer has a ribbon shape approximately 500 feet wide, 3500 feet long and an average thickness of 15 feet. The aquifer consists of coarse sand and gravel overlying gneiss and weathered bedrock and is in turn covered by a thick clay overburden.

11. The wells of individual home owners in the vicinity of the proposed well site are deep rock wells and will not be affected by pumping of the gravel aquifer. The Applicants have offered to provide water service or a new well if any well failure was caused by the pumping of their water supply wells.

12. A report of analysis of water from one of the test wells indicates that the water from the aquifer will be of a satisfactory chemical quality without treatment beyond the proposed disinfection by chlorination. However, the Department will reserve the right to require additional treatment based on results of water analyses after the production wells have been developed since no conclusion on the quality of water from those wells can be made at this time.

13. A complete water supply and distribution system will be installed consisting of two or three 12-inch diameter, gravel-packed wells, chlorination facilities, a one million gallon storage tank, pumping stations and a distribution system consisting of 8-inch and 10-inch cast iron mains equipped with hydrants. The distribution system will have two pressure zones - a normal pressure zone including the one million gallon storage tank and a high pressure zone which will be fed from the storage tank through booster pumps. The system will be designed so that a minimum pressure of 35 pounds per square inch will be maintained throughout the system.

14. An emergency generator will be provided to supply power from this water system in case of power failure and the wells will be metered. The total estimated cost to construct the water system is \$1,750,000.

15. The Applicants have been granted a revolving line of credit by Marine Midland Bank-Western of Buffalo, New York, in the amount of \$18.5 million and have obtained a comprehensive liability insurance policy from the Hartford Insurance Group from Hartford, Connecticut, with coverages in the amounts of \$1,000,000 for bodily injury liability and \$100,000 for property damage liability for each occurrence.

16. The Applicants propose to construct a dam approximately 21 feet high on an unnamed tributary of the New Croton Reservoir known locally as Brown Brook. This stream has been designated H-31-P44-18 in the State stream classification system and has been classified as a "C" stream subject to C(T) stream standards.

17. The impoundment behind the dam during normal flow conditions in this stream will have a maximum depth of 8 feet and will have a surface area of 1.6 acres. The surface area of the water during periods of extreme stream flow will be 3.5 acres.

18. The proposed dam will create a small pond for aesthetic purposes, provide for control of siltation in the stream channel downstream, provide for controlled release of the storm water runoff captured behind the dam and provide a road crossing over the stream to permit access between the western and eastern parts of the project thereby eliminating additional traffic on Warren Street which runs through the project and U. S. Highway Route 202.

19. The plans for the dam presented at the hearing were preliminary in nature and detailed plans and specifications must be filed with the Department and approved by it prior to the granting of a permit for construction of the dam.

20. The Applicants propose to relocate approximately 650 feet of the stream known as Brown Brook for the purpose of constructing a sewage treatment plant which will serve the Heritage Hills project and the proposed Greenbriar Subdivision which will be located north of the Heritage Hills project. They also propose to construct a sewage effluent discharge structure for the discharge of sewage treatment effluent from the sewage treatment plant into Brown Brook by extending the existing culvert where the stream passes under U. S. Highway Route 202. The County of Westchester has a comprehensive sewage plan for the area but it may be 10 years or more before it is implemented. The proposed sewage system is not inconsistent with the comprehensive plan and can be incorporated into an area-wide system in the future.

21. The proposed sewage treatment plant will be designed to treat an average flow of 702,000 gallons per day and hourly peak flows at a rate equivalent to a daily flow of 1,755,000 gallons per day. These design figures are based on an assumption that the waste water flows from the Heritage Hills Development will be equal to the water demand and that the proposed 250 home Greenbriar Subdivision will contribute an additional 100,000 gallons per day.

22. The proposed sewage treatment will consist of: comminution or grinding of the sewage, extended aeration which will remove carbonaceous and nitrogenous BOD (Biochemical oxygen demand) and will precipitate phosphates, clarification, sand filtration, chlorination to provide disinfection and post-aeration. This treatment plant will be designed to produce an effluent having a biochemical

oxygen demand of 5 milligrams per liter or less, a free ammonia content measured as nitrogen of 2 milligrams per liter or less, a dissolved oxygen content of 7 milligrams per liter or more and an average phosphate content measured as phosphorous of 0.5 milligrams per liter or less. This effluent will meet the water quality standards for streams classified as AA(T) which are the highest stream standards.

23. The average discharge of the sewage treatment plant of 702,000 gallons per day will occur when the project is completed in 7 to 9 years. This volume of effluent is equivalent to a flow of 1.09 cubic feet per second. The culverts downstream of the proposed discharge site have capacities ranging from 100 cubic feet per second to 250 cubic feet per second. (110) ✓✓

24. The analyses of water from Brown Brook indicate a pattern of eutrophication normal for the region, and while the stream is moderately enriched, it cannot be considered polluted. Both the nitrogen and phosphorous levels existing in the stream are higher than the amounts which were stated to be necessary to sustain and encourage algae growth in lakes or standing bodies of water. There is no evidence to indicate whether nitrates or phosphates are the limiting nutrients with respect to the eutrophication in Brown Brook.

25. There are no unique fishery or ecological resources associated with Brown Brook in the immediate vicinity of the proposed project. The lands adjacent to Brown Brook downstream of the site of the proposed effluent discharge structure have been used in the past for the mining of gravel. The proposed point of discharge is approximately 1.75 miles upstream of the Muscoot Reservoir of the City of New York. ✓✓

26. The addition of the sewage effluent to the normal flow of Brown Brook will not cause flows which have velocities in excess of the scour velocities. The average flow in Brown Brook is indeterminate because of a lack of data, but the mean flow has been estimated to be approximately one cubic foot per second.

27. Revised plans for the relocation of the stream were submitted during the hearing to provide a larger channel cross section which would permit the passage of larger volumes of water at lower flow velocities and thereby minimize or eliminate problems of erosion in the new stream channel. The relocation of the stream will be accomplished with no interruption in streamflow.

28. The sewage effluent discharge structure will be located at a point immediately south of U. S. Highway Route 202. It is proposed to extend an existing box culvert which passes under Route 202. The sewage outfall will be located in one of the walls of the extended culvert. No application has yet been made to the New York State Department of Transportation for permission to cross or utilize the highway right-of-way.

29. The discharge of the sewage effluent to either of the other two streams crossing the Applicants' property would require pumping of the sewage and additional standby treatment plants at each pump station to protect the New York City water supply. The only feasible location to build the sewage treatment plant other than the proposed site would be on adjacent wetlands which are protected by local ordinances of the Town of Soners.

30. The conclusions of the consultants hired by the prime objector in these proceedings were based on limited sampling and did not consider the plans of the Applicants to provide phosphate removal or treatment beyond that normally provided in a secondary sewage treatment plant. ✓✓

31. The Applicants have retained the engineering firm of Nabolsine, Toch, McPhee Associates as their engineers in connection with the water supply and design of the sewage treatment plant. Mr. Walter McPhee, an engineer duly licensed to practice in this State, appeared at the hearing and testified on behalf of the Applicants. The water supply system and the sewage treatment plant, if constructed, will be built under his supervision.

32. The Applicants have retained the engineering firm of Bibbo Associates in connection with the relocation of the stream and the construction of the dam and the sewage effluent discharge structure. Mr. Leonard J. Bibbo, an engineer duly licensed to practice in this State, appeared at the hearing and testified on behalf of the Applicants. The relocation of the stream and the construction of the dam and sewage effluent discharge structure, if carried out, will be carried out under his supervision.

33. The carrying out of these projects will have no adverse effect on the water supply interests of any other municipality or civil division of the State.

34. The legal damages which may be caused by the execution of the plans of the Applicants are not such as to require any special consideration or legislative enactment in order that they equitably may be determined and paid.)

CONCLUSIONS AND RECOMMENDATIONS

1. The taking of a supply of water for this project from wells at the proposed well site will not have any substantial adverse effect on the wells of individual homeowners in the area. *(How about adjoining aquifers)*

2. The quality of the discharge to Brown Brook will not result in any unnecessary or unreasonable degradation of the stream within the meaning of the Rules and Regulations for the Use and Protection of Waters (Part 603, NYCRR) but the Applicants will be required to comply with the applicable provisions of Article 17 of the Environmental Conservation Law and the applicable provisions of the Federal Water Pollution Control Act Amendments of 1972 (PL 92-500).

3. The quantity of the discharge to Brown Brook will have little or no adverse effect on the stream or to the culverts or other structures across the stream on property downstream of the proposed point of discharge.

✓✓ 4. The construction of the sewage effluent discharge structure will not result in any degradation of Brown Brook.

5. The construction of the dam will have a beneficial effect downstream of the dam during periods of high flow and will afford a measure of flood protection to Warren Street and U. S. Highway Route 202.

6. The relocation of the stream, if constructed according to the

revised plans and with adequate provisions for concentration of the low flows, will have little or no detrimental effect on the stream.

7. The proceedings should be reopened to consider the effect of any new location of the sewage effluent discharge structure if approval is not granted by the New York State Department of Transportation for the utilization of the highway right-of-way.

CONDITIONS

In order to protect the water supply and the interests of the Applicants and of the inhabitants of the territory supplied by it with water, to protect the water supply and interests of any other municipal corporation or other civil division of the State and the inhabitants thereof, to prevent unreasonable and unnecessary degradation of the environment, and to prevent adverse effects on the health, safety and welfare of the people of the State or on the natural resources thereof, the application, maps and plans submitted should be modified to conform to the following:

- A. Under this decision and approval, the Applicants are authorized to acquire a source of water supply by the construction of two or three wells which shall have a minimum capacity of 200 gallons per minute. The maximum total installed pumping capacity of the wells shall not be greater than 550 gallons per minute.
- B. Prior to the construction of the water distribution system, the Applicants shall submit the results of pump tests satisfactory to the Department. If a supply yielding at least 500 gallons per minute is not developed, the Department shall limit the number of condominium units to be served until an adequate supply of water is developed for the entire project.
- C. Prior to construction of the water distribution system, the Applicants shall undertake a prolonged pumping test of the wells satisfactory to the Department. The Applicants shall cause a sample of the water from them to be collected and analyzed and shall submit the results of such analyses to the Department. The Department shall advise either that the water is of a satisfactory sanitary quality or that specified treatment or purification thereof is necessary. In this last case, such water shall be used only after full compliance with all of the requirements of the Department.
- D. Sufficient land shall be retained so that the Applicants will own all land within 100 feet of any such well. Such land shall be used for water supply purposes only and shall be surrounded by a fence provided with gates which normally shall be kept

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locked. The entrance of animals or unauthorized persons within this enclosure shall be prevented as far as possible.

- E. This area shall further be protected from pollution by surface water originating outside thereof by the construction of suitable diversion ditches or embankments and the development of the wells shall be so carried out that there will be no opportunity for pollution entering the water in the wells.
- F. In addition, all land within 200 feet of the wells shall be protected and controlled in such a manner as to prevent pollution of the ground or groundwater within that distance. This may best be done by ownership of the land or by written agreement with the owner thereof, and, if neither of these arrangements is possible, the use of the land must be restricted by the enactment by the State Department of Health of suitable rules and regulations for that purpose.
- G. Nothing contained in this decision and approval shall be held to authorize the Applicants to supply, sell or distribute water from this source of supply for any purpose unless all such water shall first have been treated by disinfection in a manner satisfactory to the Department of Environmental Conservation.
- H. The Department of Environmental Conservation reserves the right to require the taking of further sanitary precautions or the further treatment or purification of the water from this source should conditions in the future indicate a need for such action.
- I. Provision shall be made to provide an adequate supply of water to those residents whose private well water systems are diminished or rendered non-productive by the use of the wells developed by the Applicants.
- V V J. Individual meters shall be provided to measure all water supplied to each condominium receiving service from this system. Master meters shall be installed on all sources of supply to measure all water pumped to the system.
- K. A minimum water pressure of 20 pounds per square inch shall be provided to customers at all times. An auxiliary source of power shall be provided to assure minimum pressures of 20 pounds per square inch, particularly at extreme elevations in the development, during periods of electrical power failure.

- L. An alarm system shall be provided with automatic signaling apparatus which will report when primary source equipment malfunctions. Plans for this alarm system shall be submitted to and approved by the Public Service Commission prior to placing the water supply system in service.
- M. Section 15-1529 of the Environmental Conservation Law forbids the operation of any of these works until, as constructed, they have been approved by the Department. Such final approval will be given only on written request. In general, such approval will not be given until all provisions affecting quality of the water and safety of the works have been fully complied with.
- N. The plans for the relocation of Brown Brook shall be designed to provide for the channeling of flow during periods of minimum flow and for adequate protection of the effluent pipe from the sewage treatment plant where it passes under the new channel.
- O. Prior to starting work on any construction on the water supply system, the dam, the sewage effluent discharge structure and the relocation of the stream authorized by this decision and approval, detailed plans of the structures proposed to be built and specifications for such work shall be submitted to and shall have been approved by the Department. Thereafter, such construction work shall be entirely completed in full accordance with the plans and specifications which have been so submitted and approved.
- ✓✓ P. Prior to starting work on the construction of the dam and sewage effluent discharge structure and the relocation of the stream, the Applicants shall provide the Department with a bond in the amount of \$30,000 together with sureties satisfactory to the Department to ensure that all work will be carried out in accordance with the approved plans and specifications.
- Q. The Applicants shall, in addition to the terms and conditions of this decision, fully comply with the terms and conditions of the State Pollution Discharge Elimination System (SPDES) Permit issued by the Department, the applicable provisions of Article 17 of the Environmental Conservation Law

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and the applicable provisions of the Federal Water Pollution Control Act Amendments of 1972 (P.L. 92-500).

- R. The Department reserves the right to rescind the approval being given under this decision or to take whatever action it may deem suitable and proper if the works authorized to be constructed by the decision are not initiated by January 1, 1975.
- S. The Department reserves the right to reconsider this approval at any time and after due notice and hearing at that time to continue, rescind or modify this decision in such a manner as may be found to be just and equitable.
- T. Granting of this approval does not relieve the applicant of the responsibility of obtaining any other permission, consent or approval which may be required.

STATUTORY DETERMINATIONS

1. The standards upon which a determination must be made by the Department of Environmental Conservation for any project involving the taking of a supply of water and the distribution of that supply to the public under Section 15-1503 of the Environmental Conservation Law are contained in sub-section 15-1503(4) of that Law. This sub-Section reads as follows:

"15-1503(4). The department, after hearing, shall determine whether the plans proposed are justified by public necessity, whether they take proper consideration of other sources of supply which are or may become available, whether they provide for the proper and safe construction of all work connected therewith, whether they provide for the proper protection of the supply and the watershed from contamination or provide for the proper treatment of such additional supply, whether they provide for an adequate supply; whether such plans are just and equitable to the other municipalities affected thereby and to the inhabitants thereof, particular consideration being given to their present and future necessities for sources of water supply, and whether the plans make fair and equitable provisions for the determination and payment of any and all legal damages to persons and property both direct and indirect which will result from the execution of the plans or the acquiring of such lands. If the application is for approval of a multi-purpose project, in whole or in part authorized by a general plan adopted and approved pursuant to title 11 of this article, the department, in addition, shall determine if the plans as submitted are in conformity with such general plan."

2. The application, maps and plans submitted should be modified as set forth above and, as so modified, are the plans hereinafter mentioned.

3. The applicant has established that the plans proposed are justified by public necessity.

4. The plans take proper consideration of other sources of supply which are or may become available.

5. The modifications and conditions set forth above assure that said plans provide for the proper and safe construction of all work connected therewith.

6. The modifications and conditions set forth above assure that said plans provide for the proper protection of the supply and the watershed from contamination and for the proper treatment of such supply.

7. The plans provide for an adequate supply.

8. The applicant has established that the plans are just and equitable to other municipalities affected thereby and to the inhabitants thereof, particular consideration being given to their present and future necessities for sources of water.

9. The applicant has established that said plans make fair and equitable provisions for the determination and payment of any and all legal damages to persons and property, both direct and indirect, which will result from the execution of said plans or the acquiring of said lands.

10. The standards upon which a determination must be made by the Department for any project involving the construction of a dam under Section 15-0503 of the Environmental Conservation Law or the disturbance of the bed and banks of a classified stream under Section 15-0501 of the Environmental Conservation Law are contained in Section 608.6 of The Official Compilation of Codes, Rules and Regulations of the State of New York (6NYCRR-Conservation)." This section reads as follows:

"608.6 Standards. (a) The basis for the issuance of a permit shall be a determination that the proposal is in the public interest in that:

(1) The proposal is reasonable and necessary.

(2) The proposal will not endanger the health, safety and welfare of the people of the State of New York.

(3) The proposal will not cause unreasonable, uncontrollable or unnecessary damage to the natural resources of the State, including soil, forest, water, fish and aquatic and land-related environment."

This

11. The application, maps and plans submitted should be modified as set forth above and as so modified are the plans hereinafter mentioned.

12. The proposals are reasonable and necessary.

13. The proposals will not endanger the health, safety and welfare of the people of the State of New York.

14. The proposals for the construction of the dam and the sewage effluent discharge structure and relocation of the stream as modified will not cause unreasonable, uncontrolled or unnecessary damage to the natural resources of the State, including soil, forests, water, fish and aquatic and land related environment.

15. As a consequence of these determinations, the proposals will not result in endangerment of the health, safety and welfare of the people of the State of New York.


DECISION

The foregoing Report of Hearing Officer William J. Dickerson, Jr., dated January 11, 1974, including recommended Findings, Conditions and Determinations, is hereby adopted and incorporated by reference as if set forth in this decision.

Such Determinations permit the Department to approve of the applications, maps, and plans of Henry Paparazzo and Curtis McGann as modified.

IN WITNESS WHEREOF, the Department of Environmental Conservation has caused this determination and approval to be signed and has filed the same with all maps, plans, reports and other papers relating thereto in its office in the County of Albany this 17th day of January, 1974.

DEPARTMENT OF ENVIRONMENTAL CONSERVATION



J. L. BIGGANE, Commissioner



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United States Environmental Protection Agency
Region II
26 Federal Plaza
New York, New York 10007
212-264-2515

PUBLIC NOTICE

No. NPDES 74-645 - Date: APR 30 1974

Notice is hereby given that the United States Environmental Protection Agency (EPA) has received a complete application (No. NY 0026891) from the

H & H Land Corporation - Heritage Hills of Westchester
Route 100
Somers, New York

(the Applicant) for a National Pollutant Discharge Elimination System (NPDES) permit to discharge pollutants into navigable waters under the Federal Water Pollution Control Act Amendments of 1972 (the Act) (33 U.S. Code §§ 1251-1376).

The applicant presently does not discharge wastewater, as his facilities are not operational. At such time as they do become operational, however, the applicant proposes to provide sufficient treatment and disinfection for a design flow of 0.702 MGD to comply with accepted water quality parameters. The proposed facility will discharge treated sanitary wastewater through one outfall (discharge No. 001) into Brown Brook.

The Region II staff of EPA has tentatively determined to issue a permit to the Applicant subject to certain effluent limitations and other conditions necessary to carry out the provisions of the Act. Interested persons may submit written comments on the tentative determinations to the Regional Administrator at the above address no later than **MAY 30 1974**. The period for submitting comments may be extended if the public interest warrants.

A copy of the draft NPDES permit and other available information may be obtained by mail from the Region II Office, Room 1005, 26 Federal Plaza, New York, New York 10007, or by calling 212-264-2515 or in person between 8:00 A.M. and 4:30 P.M., Monday through Friday. Other forms and relevant documents may be inspected at said office. Copies will be provided at a charge of \$.20 per copy sheet.

In lieu of, or in addition to, the submission of comments as above provided, any interested person may request that the Regional Administrator hold a hearing to consider the permit application and the tentative determinations with respect thereto. Any request for a hearing shall:

- (a) be in writing and submitted to the Regional Administrator no later than **MAY 30 1974**
- (b) specify whether an informal Public Hearing under §125.34(b) of 40 Code of Federal Regulations (Federal Register, May 22, 1973, pp. 13528, 13537) or a formal Adjudicatory Hearing under §125.34(c) of said Code (ibid.) is requested.
- (c) state the name and address of the person making the request and of any other persons represented by him.
- (d) identify the interest of the requester and of any person he represents which would be affected by the issuance or non-issuance of the permit.
- (e) state with particularity the reason for the request, the issues proposed for consideration at the hearing and the requester's position thereon.

(f) include an agreement, if the request is for an Adjudicatory Hearing, by the requester and any person represented by the requester, to be subject to examination and cross-examination, and in the case of a corporation, to make any employee available for examination and cross-examination at his own expense on the request of the presiding officer, on his own motion or on the motion of any party.

If the Regional Administrator finds there is a significant degree of public interest in the proposed permit he will hold an informal Public Hearing. If he finds that a request for a formal Adjudicatory Hearing is timely, meets the above requirements, and sets forth material issues relevant to the question whether a permit should be issued and with what conditions, he will assign the matter for an Adjudicatory Hearing. If a Public Hearing is held, the Regional Administrator will make such modifications in the terms and conditions of the proposed permit as may be appropriate and will issue or deny the permit. Notice thereof will be issued to all persons who participate in the Public Hearing or whose names appear on the NPDES mailing list maintained by EPA, Region II. Within 20 days thereafter any person may submit to the Regional Administrator a request, complying with the requirements set forth above, for an Adjudicatory Hearing to consider the proposed permit and its conditions. If such request is granted, any other interested person may submit a request to be a party within 30 days after the date of publication of public notice of an Adjudicatory Hearing and the matter shall be assigned for such a hearing as provided above.

If no request for a Public Hearing or an Adjudicatory Hearing is granted, the Regional Administrator, after consideration of (a) the tentative determinations, (b) any comments received from interested persons and (c) the requirements of the Act and regulations promulgated thereunder will make final determinations with respect to the proposed permit. If such determinations involve no significant changes in the draft permit, the Regional Administrator will issue the permit subject to such changes, if any. If significant changes are involved, the Regional Administrator will forward the revised determinations to the Applicant and will give public notice thereof.

If within 30 days following the date of such notice, no request for an Adjudicatory Hearing meeting the requirements set forth above has been received, the determinations of the Regional Administrator will become final and he will issue or deny the permit unless he decides to hold a Public Hearing.

All comments timely submitted by interested persons in response to a notice of an application for a permit, all statements properly submitted at Public Hearings and all evidence incorporated in the record of an Adjudicatory Hearing will be considered by the Regional Administrator in the formulation of his final determinations with respect to the application for a permit.

Any permit issued by the Regional Administrator shall become effective 30 days thereafter unless a Public Hearing or an Adjudicatory Hearing is held as above provided.

Richard A. Flye
Chief
Water Enforcement Branch
Enforcement and Regional Counsel Division

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

NOTICE OF APPLICATION FOR CERTIFICATION
UNDER PROVISIONS OF FEDERAL WATER POLLUTION
CONTROL ACT AMENDMENTS OF 1972

Notice is hereby given that, pursuant to Section 401 of the Federal Water Pollution Control Act Amendments of 1972 and Part 608 of the Codes, Rules and Regulations of the State of New York for issuance of certification under said law, the H & H Land Corporation - Heritage Hills of Westchester, Route 100, Somers, New York 10589, has filed an application with the New York State Department of Environmental Conservation at its office at 50 Wolf Road, Albany, New York 12201, where the application and published rules and regulations for administration of the law are available for public inspection.

The applicant proposes to obtain a Federal permit under Section 402, National Pollutant Discharge Elimination System, of the Federal Water Pollution Control Act Amendments of 1972 (P.L. 92-500) to discharge into Brown Brook from the H & H Land Corporation - Heritage Hills of Westchester facility located off Warren Street, in the Town of Somers, New York 10589, as described in their application for a Federal permit.

The applicant further requests that the activity be certified by New York State pursuant to Section 401 of the Federal Water Pollution Control Act Amendments of 1972.

Any person interested in this application who

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wishes to become a "Party-in-Interest" in a proceeding in accordance with published rules and regulations of the Department must notify the undersigned in writing stating specific areas of interest on or before May 27, 1974.

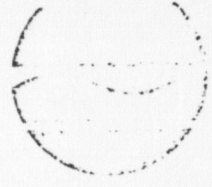
Any Party-in-Interest will be eligible to be heard if a public hearing is ultimately held in connection with the application.

William L. Garvey, P.E.
Chief, P.D.E.S. Permit Section
Division of Pure Waters

May 2, 1974
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New York State Department of Environmental Conservation
Albany, N. Y. 12201

Henry L. Diamond,
Commissioner

April 5, 1974

*H. & H. Land
Corp.*

NY 0026891

Meyer Scolnick, Director
Enforcement and Regional Counsel Division
U.S. Environmental Protection Agency
Region II
26 Federal Plaza
New York, New York 10007

Dear Sir:

This letter serves to inform you that the State of New York, Department of Environmental Conservation intends to certify, pursuant to Section 401 of the Federal Water Pollution Control Act Amendments of 1972 (the Act), the discharge(s), listed below. This action is a result of the recently developed procedures regarding a "Joint Public Notice" to be issued by EPA in conjunction with NYSDEC. The "Joint Public Notice" indicates both EPA's receipt of a complete NPDES application and NYSDEC's intention to certify under Section 401 of the Act.

Therefore, having previously been requested by the Environmental Protection Agency to act on subject application(s) pursuant to Section 401 of the Act, and upon receiving no indication from EPA that either a public hearing is to be held, or that any significant comments have been received regarding subject discharge(s), the State of New York, Department of Environmental Conservation will, subsequent to the comment date indicated in the notice, issue the required certification(s).

The following list of discharges, having been previously designated by EPA as effluent limiting, is being forwarded for your use in a joint public notice issuance:

1. H and H Land Corporation, Somers (T),
Westchester County, NY 0026891
Effluent limitations and monitoring requirements that would normally become part of the certification, as required under Section 401a(1) of the Act, were forwarded to you on March 21, 1974.

However, subsequent to submitting the above materials, the Department has determined that the following additions and changes to the effluent limitations and monitoring requirements are required.

Meyer Scolnick
Page 2
April 5, 1974

In addition to the effluent limitations previously submitted, it is recommended that the following effluent limitations also be made part of the draft permit.

Effluent Limitations

Settleable solids	0.1 ml/l
Residual chlorine	≥ 0.5 mg/l and ≥ 3 lbs/day
Phosphorous	0.5 mg/l and 3 lbs/day

The following monitoring requirements will take precedence over those previously submitted on March 21, 1974.

<u>Parameter</u>	<u>Frequency</u>	<u>Sample Type</u>
Total Flow, MGD	Continuous	---
BOD ₅ , mg/l	1/week	6 hr. composite
Settleable solids, ml/l	1/day	Grab
Suspended solids, mg/l	1/week	6 hr. composite
pH	1/day	Grab
Residual chlorine, mg/l	1/day	Grab
Phosphorous	1/week	Composite
Fecal Coliform, N/100 ml	1/week	6 hr. composite
Temperature °C	1/day	---
D.O.	1/week	6 hr. composite
Ammonia	1/week	6 hr. composite

Attached is a copy of the New York State Pollutant Discharge Elimination System (SPDES) draft permit that was a result of H and H Land Corporation's filing of a SPDES application. You may find the information contained therein helpful in the development of the NPDES permit.

Attached are information copies of party-in-interest letters that were received subsequent to the publishing of a notice of application for a permit to discharge under provisions of the State Pollutant Discharge Elimination System.

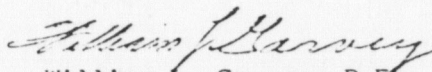
In this connection we have reviewed the hearing record relative to the applicant's water supply application and have concluded that most of the issues raised by the parties-in-interest were covered and addressed to during the hearing. However, particular reference is made to a letter, dated January 11, 1974, to the State of New York, Department of

Meyer Scolnick
Page 3
April 5, 1974

Environmental Conservation, from W.J. Florence, Jr., in behalf of Sun Enterprises, Ltd., in which is indicated that expert testimony is available to be produced as to the effect of subject discharge on Brown Brook.

If you have any questions, do not hesitate to contact us.

Very truly yours,



William L. Garvey, P.E.
Chief, P.D.E.S. Permit Section
Division of Pure Waters

cc: Mr. Seebald
Mr. Krug
Mr. Harrison, Region 3



67b

DEMPSEY SPRING O'KEEFE & FLORENCE

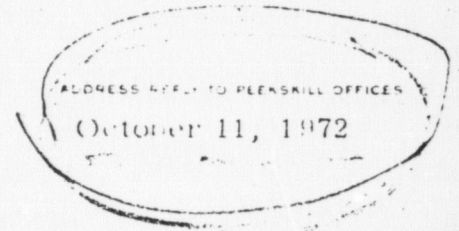
CONSULTANTS AT LAW
DEMPSEY BUILDING
PELSKILL, N. Y. 10566
914 737 10

WHITE PLAINS OFFICES
NORTHCOURT BUILDING
WHITE PLAINS, N. Y. 10601
914 943 6600
CABLE DEMLEX

JAMES DEMPSEY
ARTHUR J. SPRING
RICHARD J. O'KEEFE
WILLIAM J. FLORENCE, JR.

BRIAN A. SCHOL
EDWIN P. TIIMONEN
ANDREW W. TULLY, JR.

SHERWOOD E. SULLIVAN
COUNSEL



Zoning Board of Appeals,
Town of Somers
Town Hall
Somers, New York

Town Board, Town of Somers
Town Hall
Somers, New York

Planning Board, Town of Somers
Town Hall
Somers, New York

Gentlemen:

I represent Sun Enterprises which owns a parcel of land directly to the south of the proposed Heritage Hills Development. We welcome Heritage Hills to the Town of Somers and accordingly don't want our reservations misunderstood. We are very concerned with the concept of Heritage Hills' proposed handling of its sewage and surface water drainage system.

As presented to the Zoning Board of Appeals, the sewage treatment plant is a four stage processing plant which is represented to remove approximately 92% of the nutrients and phosphates of the effluent processed. Our primary concern is that the plant will process approximately 500,000 gallons of fluid per day when the development is completed and the processed water is intended for deposit into a stream called the Brown Brook and which has variously been categorized as a "C" stream by the State of New York on the records of the Federal Soil Study and as a "D" stream by the records of the State of New York itself which stream ultimately finds its way some 3,000 feet downstream to a reservoir of the New York City Water Supply.

Geographically the area proposed for improvement by Heritage Hills encompasses two ridges and a basin. Brown

ONLY COPY AVAILABLE

DEMPSEY SPRING O'KEEFE & FLORENCE

-2-

Brook serves as the drainage for this basin. It is a stream through the property owned by the applicant, Heritage Hills, crosses under Route 202 and empties into the northerly end of a marshland covering some 40 acres. The marshland comes within six feet of a reservoir containing some 800,000 gallons. At the southeasterly corner of the marsh, the stream forms a gain and proceeds through property of my client and other property owners. Adjacent to the stream are wells which serve users of buildings pre-existing along Route 100 including the New York State Police Barracks, several residences and a restaurant. For such locations on my client's property, the stream is channeled into two 18-inch culverts where roadways and driveways traverse the stream.

We have grave concern for the following issues:

1. The quality of the effluent being discharged.
2. The likelihood of contamination of the existing potable water sources of the present users on the property which the stream traverses and potential users of a reservoir containing some ~~800,000~~ ^{800,000} gallons of water.
SC: Hiltner
3. The quality of water which will be added to the natural flow of the stream will no doubt cause substantial flooding.
4. The contamination of the stream water channeled into the stream as well.
5. The increase of velocity of the water.
6. The ability of the land when it has been "improved" to absorb rain water will be somewhat diminished, adding to the natural flow from the surrounding lands into the basin that creates the brook itself.

In addition, Heritage Hills proposes two golf courses which will undoubtedly require far more insecticides and fertilizers to maintain the greens and fairways than normally would be used by individual homeowners on their respective lawns.

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The contour of the land is such that the elevation drop of a distance of 4,000 feet to the south end of my client's property is minimal indicating to me that the stream has no capacity to successfully absorb great inputs of water without concomitant flooding.

The present flow of the stream will be magnified ten-fold (if we accept the figures) by the addition of the water from the sewage plant in dry weather. When it rains, the increase will no doubt exacerbate the flooding condition still another ten-fold if our previous measurements are any indication.


Accordingly, I would make the following recommendations:

That the Town require some security in the form of a surety bond in the event that flooding shall occur, from the deposit of the additional waters into the stream, for the protection of the lower riparian owners.

The entire basin is made up of substantial parcels of unimproved realty and it would appear that the soundest principal that could be applied for the benefit of the Town would be to have a single sewage plant the furthest distance downstream possible to minimize the deleterious effects of the deposit of the effluent from the plant. With that in mind I would offer an appropriate amount of property at the South end of the Sun Enterprises property free of charge to achieve this result. The Sun Enterprise parcel will undoubtedly be developed in the very near future and if that prognosis becomes a reality, it will require a second private sewage treatment plant within 4,000 feet on the same stream. As I understand the sound engineering principles involved, it is better to have a single plant to cover the entire drainage basin area rather than a series of small privately owned plants.

Accordingly, I would hope that the appropriate authorities would seriously consider such an offer.

Very truly yours,


William J. Florence, Jr.

WJF:BB

cc: Mr. Calvin Weber

cc: NYS Department of Environmental Conservation

71b

Sun Enterprises, Ltd.

ROUTE 100 - SOMERS, NEW YORK 10589

360-24-0051

Industrial - Commercial - Residential
Real Estate - Investment & Development

Tel: (914) 277-4300

RECEIVED
October 16, 1972

Mr. Calvin Weber, Director
Division of Environmental Health Services
Westchester County Health Dept.
148 Martine Avenue
White Plains, N. Y.

OCT 18 1972

ADMINISTRATIVE UNIT
N. Y. S. Department of
Environmental Conservation
Region #3

Dear Sir:

First, I wish to thank you personally for your kind consideration and understanding on Friday, October 13, 1972 at your office, regarding the future flooding and pollution of our property (South of Rte. 202) Somers, N. Y. if the proposed plans for location of the sewage treatment of "Heritage Hills" (north Route 202, Somers, N. Y.) is approved by the Town of Somers, The Health Dept., and/or the N.Y. State Department of Environmental Conservation.

In addition to the letters from our attorneys - October 11, 1972, wherein they spell out most of the problems arising out of the Heritage Hills Sewer proposal, we would like you to know that:

- 1) The Elevation of the Pond, and the "Brown" Brook, north of Rte. 202 on the west side of Warren St. is 236 Elevation.
- 2) The Elevation of "Sun" land throughout 40 acres of wetlands and "Sun" land South of the wetlands is 235 Elevation.
- 3) The Lake to the West and back of the 19th Hole restaurant on Route 100 (located in "Brown" Brook) is 232 Elevation

Therefore, it is to be noted that this Brook and "Sun" land is very Flat and cannot become a Surge basin or Cesspool for Heritage Hills Sewage outflow.

This elevation (232) of the lake (west of 19th Hole restaurant) then drops 12 ft. to elevation (220) where this "Brown" Brook leaves "Sun" Property to the South - therefore there is only (4) ft. of Pitch over 3500 ft. from Rt. 200 at Warren St. South to the top of the dam in lake (west of 19th Hole). This concludes the "Brown" Brook and the "Sun" wetlands are not suited to receive and carry the vast volume - 600,000 to 800,000 gals. daily of the treated sewage that is projected to be dumped in this small stream from north of Rt. 202 from Heritage Hill development.

The Elevation of "Sun" (10 acres) water supply reservoir for future "Sun" land development is elevation (236) therefore any percentage of nutrients and phosphates from Heritage Hills Sewer Plant

October 16, 1972

Mr. Calvin Weber, Director - 2

will filter thru wetlands on "Sun" land and into "Sun" water reservoir and destroy same.

The Bridges, culverts, etc. - 6 crossings in all - constructed by Sun Enterprises, Ltd., where this "Brown" brook traverses the "Sun" property are not capable of any increase of volume or water from any source, sewage or increased storm water flow, without flooding of all surrounding acres on "Sun" land and the destruction of these private crossings and Bridges.

The "Brown" Brook throughout the "Sun" property is a distance of 4000 feet north and south and is a "Controlled Stream" and is classified as P - 51D - "C" (T) by N. Y. State Conservation Dept.

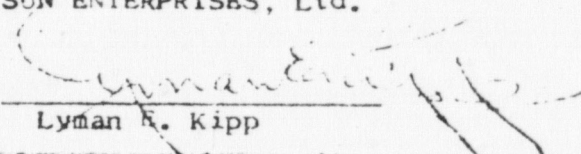
TROUT STREAM

We ask that these facts be carefully weighed and checked and that the proposed sewer treatment plant be located in the "Brown" Brook to the South of the "Sun" Land in order to avoid future complications.

Thanking you for your kind consideration of these facts, we remain

Yours truly

SUN ENTERPRISES, Ltd.


Lyman E. Kipp

LEK/an

cc - Mr. Warren McKeon, Director Region (3)
N.Y.S. Dept. of Environmental Conservation,
21 So. Putt Corner Rd., New Paltz, N.Y. 12561

cc - Mr. George Danskin, Supervisor of Regulations, New Paltz, N.Y.

cc - Mr. John Harrison, Supervisor, N.Y.S. Environmental Con., White Plains, N.Y.

cc - Zoning Board of Appeals, Town of Somers

cc - Town Board, Town of Somers,

cc - Planning Board, Town of Somers

Sun Enterprises, Ltd.

ROUTE 100 - SOMERS, NEW YORK 10589

Industrial - Commercial - Residential
Real Estate - Investment & Development

Tel: (914) 277-4300

October 17, 1972

Mr. Warren McKeon
Supervisor Region (3)
New York State Dept. of Environmental Conservation
New Paltz, New York 12561

Re: Sewer and Storm water disposal
Heritage Hills, North Rt. 202, Somers, N.Y.
Reference: "Brown Brook"
Classified P-57-D-C(T)

Dear Sir:

Thank you for your kind cooperation and understanding in connection with the meeting in your office at New Paltz, N. Y. on Thursday, October 12, 1972, regarding the effects and destruction of our (Sun Enterprises, Ltd.) Land, Lakes, Culverts, Bridges, Stream and the Spring-fed water reservoir (100 million gallons) should the Heritage Hills project (north of Rte. 202) discharge sewer and storm water effluent adjoining to the north of our 200 acres on the west side of Rte. 100, Somers, N.Y. into the "Brown" Brook (P-57D-C(T) (Classified) that traverses over 4000 feet of our land south from Route 202, Somers, N. Y.

This whole area, owned by "Sun" Enterprises, Ltd. is very flat with the "Brown" Brook having only 4 ft. of Pitch for 4000 ft. lineal from Rte. 202 South through Sun Enterprises, Ltd. property to the south property line of Sun Enterprises, Ltd.

The Sun Enterprises, Ltd. land is also very flat adjoining the "Brown" Brook on both sides of this shallow stream with this brook being only 3 ft. wide throughout most of its course and the banks of the brook and the surrounding land being only 12" above the bed of this stream. This stream is very nearly dry throughout the greater part of the summer and only increases in flow during the rain storms and in the Spring of the year when the snow is melting.

The "Brown" Brook spreads into a 40 acre wetland area on the north end of the Sun Enterprises, Ltd. land (south of Rte. 202). This wetland area adjoins a large (10) acre 100 million gallons spring fed drinking water reservoir (water boils from gravel bottom of this 40 ft. deep reservoir,) and the water level never changes.

This brook then forms again at the south end of the wetlands and continues through culverts, under small bridges and into several small (1) acre lakes and ponds on "Sun" land.

October 17, 1972

Mr. Warren McKeon - 2

Our concern is that should the projected 600,000 to 800,000 gallons daily of effluent from Heritage Hills Sewer treatment plant (north of Rt. 202 as planned) be dumped into this small "Brown" brook, then into our wetlands, Spring water reservoir, then the "Sun" land will certainly be flooded and destroyed by the increased volume and velocity from the Heritage Mills Sewer treatment and storm water output.

We ask that your Dept. of Environmental Conservation check all our statements and please observe by visiting our property the severe damage that can occur should Heritage Hills be permitted to empty all the aforementioned waste and storm water into the "Brown" Brook and Sun Enterprises, Ltd. lands. We all know the detergents, nitrates and phosphates cannot be removed by treatment and will gradually destroy our Spring Water Reservoir.

The alternative is to place the sewage treatment plant down stream to the south beyond the Sun Enterprises, Ltd. spring water and wetland area. *The "Sun" property & Reservoir cannot be made an open water field in a surge area for sewage flooding.*

Should any hearings be scheduled regarding this matter, we would appreciate notice in order to attend same.

Thank you for your careful examination of this matter. We remain

Yours truly

SUN ENTERPRISES, Ltd.

Lyman E. Kipp
Lyman E. Kipp

LEK/an

cc Mr. John Harrison
N.Y.S. Environmental Conservation ✓
901 No. Broadway
N. White Plains, N. Y.

cc Planning Board, Town of Somers ✓

cc Zoning Board of Appeals - Town of Somers

Sun Enterprises, Ltd.
 ROUTE 100 - SOMERS, NEW YORK 10589

Financial - Commercial - Residential
 Real Estate - Investment & Development

Tel: (914) 277-4300

March 22, 1973

Heritage Hills, Inc.
 Route 100
 Somers, New York

Re: Pollution of the "Brown" Brook P-57D(1) chain of
 lakes, and the water reservoir in "Sun" property.

Gentlemen:

During the heavy rains on Friday, March 16, and Saturday, March 17, the silt and earth and top soil that was disturbed by bulldozers and other equipment clearing stumps and grading of land, etc., washed into the "Brown" Brook, and was washed down stream to the south and deposited in our several lakes (north of our dam on Route 100) and into the stream bed along the entire length of this stream. This pollution has caused irreparable damage in that the stream and lake bottoms are being filled with silt and soil, thereby raising the elevation of the stream and lakes that will cause future flooding of our lands.

Heritage Hills, Inc. and/or Heritage Development Group, Inc. and/or your subcontractors have directly or indirectly torn up the earth, removed trees, stumps and vegetation along the east side of the "Brown" Brook on the easterly slope parallel to Warren Street north of Route 202 and south and east of the Warren Cemetery - while clearing and grading for the proposed golf course along Warren Street on your land.

This pollution must stop now, as the geese, ducks and other water fowl, young trout by the hundred that we have stocked in the brook and lakes, are dying - also the families of otter and mink living in our wetlands will certainly leave. This disregard of others is disgusting and certainly not proper management of any construction project. We also bring to your attention that the Zoning Board of Appeals Permit for your D.R.I. project is conditional upon your Protection and preservation of the Heritage Hills water ways ("Brown" trout stream) lakes, reservoir and wetlands not only on your land but on the lands of "Sun Enterprises, Ltd." and other adjoining owners. The Town of Somers and the State of New York may require a substantial Bond to assure the protection of this brook and wetlands. A word to the wise is sufficient.

This is notice to your firm to cease and desist the pollution of the above captioned "Trout Stream" - "Brown" Brook and lakes on "Sun"

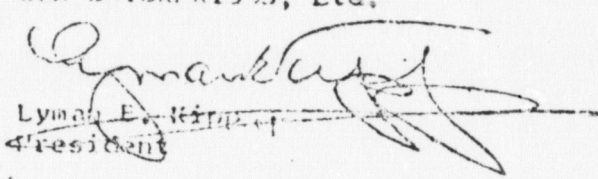
March 22, 1973

Heritage Hills, Inc. - 2

property south of Route 202, Somers, New York due to your complete disregard for the rights of downstream owners.

Yours truly

SUN ENTERPRISES, Ltd.


 Lyman E. King
 President

ONLY COPY AVAILABLE

LEK/an

cc Commissioner Henry Diamond
 N.Y. State Div. of Environmental ~~Conservation~~ Conservation
 Albany, New York

cc Mr. George Danskin
 N.Y.S. Environmental Conservation
 21 So. Platt Corners Road
 New Paltz, N.Y. 12561

cc Mr. Calvin Weber, Director
 Westchester County Health Dept.
 County Office Building
 White Plains, New York

Same letter sent to: Heritage Hills, Inc.
 Heritage Development Group, Inc.
 H. & H. Land Corp., Land Corp., Southbury, Conn.

cc Town Board, Town of Somers
 Zoning Board of Appeals, Somers.

*all
 certified
 mail*

77b

DEMPSEY SPRING O'KEEFE & FLORENCE

COUNSELLORS AT LAW
DEMPSEY BUILDING
PEEKSKILL, N. Y. 10566
(914) 737-1010

WHITE PLAINS OFFICES
NORTHCOURT BUILDING
WHITE PLAINS, N. Y. 10601
(914) 943-6600
CABLE DEMLEX

JAMES DEMPSEY
ARTHUR J. SPRING
RICHARD J. O'KEEFE
WILLIAM J. FLORENCE, JR.

BRIAN A. SICHOL
EDWIN P. TIIMONEN
ANDREW W. TULLY, JR.

SHERWOOD E. SILLIMAN
COUNSEL

FLOODING & EROSION OF "SUN" PROPERTY

ADDRESS REPLY TO PEEKSKILL OFFICES

January 11, 1974

Mr. Lawrence Tufts
Supervisor, Town of Somers
Town Hall
Somers, New York

Re: Building Permits of Heritage Hills

Dear Mr. Tufts:

I am writing on behalf of Sun Enterprises, Ltd. as they are and have been effected by the upland construction of the Heritage Hills Group and how that construction has effected the land of Sun Enterprises, Ltd.

I would ask that you order the Building Inspector to refuse to issue any building permits and to halt any further building until the construction requirements as set forth by the Zoning Board of Appeals, in addition to Section 134 of the zoning ordinances of the Town of Somers, are complied with to your satisfaction.

I would respectfully suggest that the Town has an obligation which is not to be confused with the State's interest in pure water standards. Such confusion resulted in a substantial embarrassment to the Town of Yorktown when it became involved in litigation at Mohegan Lake with Chalet Homes. My point is that the Town ✓ ✓
✓ ✓ should not rely on some other governmental body to protect its interests. The reason is that the State does not use or enforce the zoning ordinances of the Town of Somers, nor does it enforce normal building requirements, nor does it have any interest in the limitations and conditions placed upon it by the Zoning Board of Appeals when that body gave conditional permission to the development to do certain things.

DEMPSEY SPRING O'KEEFE & FLORENCE

Mr. Lawrence Tufts

Page Two

January 11, 1974

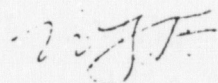
My client has been inundated, flooded, silted and insulted because of improper site development work. There has been a failure to control siltation and erosion. As a consequence, not only has my client been damaged but other of his neighbors as well have suffered.

Lastly, I would respectfully direct your attention to the new zoning ordinances dealing with Designed Residential Developments, Section 7202, B 2, wherein the Town sets forth its purpose in the creation of such a district and lists as one of its provisions the preservation of the "Town's water bodies, wet lands, marshes, standings of trees ... and the prevention of land erosion."

It is not possible to visit the site and look at the Brown Brook and adjacent ponds and not see the siltation, soil erosion and flooding conditions.

Your attention to this matter would be gratefully received by my client and I am sure many of his neighbors. Please accept my personal congratulations in your recent victory.

Very truly yours,


William J. Florence, Jr.

WJF/ac

RECEIVED

79b

Sun Enterprises, Ltd.

ROUTE 100 - SOMERS, NEW YORK 10589

JAN 22 1974
New York State Department of
Environmental Conservation
Industrial - Commercial - Residential
Real Estate - Investment & Development

Tel: (914) 277-4300

January 17, 1974

N. Y. S. Dept. of Environmental Conservation
Mr. Ralph Manna, Permit Agent
21 South Pitt Corners
New Paltz, N.Y. 12561

Re: "Brown Brook"
Thru "Sun" Land, Somers, N.Y.

Dear Sir:

We refer to your letter of Nov. 13, 1973 addressed to our attorney, Mr. William J. Florence, Esq., Dempsey Bldg., Peekskill, N.Y. Re: Sun Enterprises, Ltd. Special Exception Use Permit on "Sun" property, Somers, for Grading and Gravel on "Sun" property.

Mr. L. E. Kipp of Sun Enterprises, Ltd. called your office on Nov. 20, 1973 relative to your letter to "Sun" with your warning concerning any alteration or disturbance of the "Brown" Brook - P-57D (T) or H 31-P 44-18 and Mr. L. Kipp asked you who prompted this letter to us concerning "Sun" Special Exception Use ZBA Permits with reference to grading "Sun" land and your reply was - Heritage Hill Developers - Mr. McGann and Mr. Blassi - wrote you a letter to have you police our grading operations.

We have had Somers ZBA Exception Use Permits to grade Sun property for eight (8) years and have never encroached, disturbed or molested the "Brown Brook" thru "Sun" lands except on one occasion when we received a Permit from N.Y. State Conservation Dept., New Paltz, N.Y. for the installation of Culvert Pipes in "Brown Brook" for Road Crossing on Sun Property. This is a matter of record.

Now, we are concerned with your sudden policing interest in the "Brown Brook" regarding Sun Enterprise, Ltd., activities, and we bring to your attention the N.Y. State Environmental Bulletin Form #WR-P4 - (4/73) that you enclosed in your letter to William Florence, Esq. on Nov. 13, 1973 for "Sun" use in conforming with the law.

We have been writing H & H. Land Corp. and/or Heritage Hills Group (the developers) Calvin Weber, P.E. Westchester County Health Officer, William Marcon, Somers Engineer, the N.Y. State Dept. of Environmental Conservation, and the Town of Somers, since April 1973 regarding the erosion of mud, earth, silt, etc. that has entered this "Brown Brook" and the "Sun" lakes and wetlands and well areas that has caused heavy siltation after every rain storm, due to complete disregard by Heritage Hills for the "Brown Brook" and all the downstream owners. Heritage has been using "Brown Brook" to illegally transport great volumes of their silt and earth mud to "Sun" water bodies down stream. This is illegal.

January 17, 1974

N.Y.S. Dept. of Environmental Conservation - 2
Mr. Ralph Manna, Permit Agent

We now ask you what your department has done over the last nine months to correct and/or prosecute the flagrant violation of the N. Y. State laws and rules by Heritage Hills developers?

We enclose copy of E.C.D. Bulletin #WR-P-4 (4/73) wherein we have circled marked "A" the part that pertains to Heritage Hills development. Heritage Hills excavated an artificial lake south of model buildings, north of Rt. 202, Somers, N.Y. in 1973 - hauled the excavated earth, mud, humus, clay, etc. to the edge of "Brown Brook", filling in a Heritage wetland area on the east side of Warren St. and east of Brown Brook Culvert under Warren St. East Port Pond. This dump area is on Northeast corner Warren St. and Rt. 202, Somers, N.Y. and the material still exists in this area in piles along the brook and in the Heritage wetland area.

Every time there is a rain storm a portion of these piles of earth, clay, humus materials, turn to mud and erode into the Brown Brook and are carried downstream to settle in all the various "Sun" lakes, brook and wetland areas.

We know the New York State Department of Environmental Conservation is responsible, being aware of this condition months ago, as we have reported same to them numerous times, but they have taken no action to correct same (regardless of who violates the law.) We expect positive action and an answer to this notice to you as we do not intend to be side-tracked. Our land has been damaged and is gradually being confiscated.

We cannot understand how and why N.Y.State Dept. of Environmental Conservation can choose sides. Your failure to act after notice by allowing this illegal and damaging condition to start and continue for (8) months without any action by the State of New York Dept. of Environmental Conservation is beyond understanding. The N.Y.State voters approved a large sum of money to N.Y.S.D.E.C. to police and act on these matters. The various State & Federal laws make it possible for you to enforce these laws.

We expect in answer to this notice.

Yours truly
SUN ENTERPRISES, Ltd.

Lyman E. Kipp, President

LEK/an

cc Mr. Calvin Weber
cc Mr. J.Egan, N.Y.City D.E.C.
cc Commissioner James L. Biggone, Albany
cc Town of Somers - Mr. L. Tufts

Sun Enterprises, Ltd.

ROUTE 100 - SOMERS, NEW YORK 10589

Commercial - Residential
Investment & Development

Tel: (914) 277-4300

January 18, 1974

N.Y.S. Dept. of Environmental Conservation
 Mr. William L. Garvey, P.E.
 Chief "Spdes" Permit Section
 Div. of Pure Waters
 Room 300
 50 Wolf Road
 Albany, N. Y. 12201

Re: Dept. of Conservation
NY 55-001 - Somers, N.Y.

Dear Sir:

We are the owners of a large (200 acre) tract of land south of Rt. 202, Somers, N.Y. and through our property and our wetlands the Brown Brook (P-57D (T)) traverses for a distance of 3000 lineal feet from Route 202 South to a Culvert opposite Rt. 133, along Rt. 100.

The application of H & H Land Corporation (which is owned and controlled by Curtis McManis & Henry Paparazzo) for a permit to discharge treated wastewater from a proposed Tertiary Secondary Sewer treatment plant via a 16" waste or outfall pipe is hereby opposed by our corporation for the following reasons.

1) The Brown Brook from Rt. 202 south is only an intermediary stream for a 300' distance then this Brown Brook spreads into our 50 acre wetlands that is adjoining our 10 acre spring fed lake (potable water), 100,000 gal. N.Y. State Police well and other wells used for Human Consumption on our property. The "Sun" wetlands area again discharges into the continuation of the Brown Brook (South of these wetlands) some 2000 feet south of Rt. 202 where the Brown Brook crosses this Highway into "Sun" Property.

The land from Rt. 202 South thru our wetlands and lake area is exceptionally flat (plateau) with only (3) feet of pitch in 3000 lineal feet, therefore, these ("Sun") wetlands and this small Brown Brook is not capable of accepting any added water for obvious reasons: The "Sun" wetlands and the Brown Brook cannot handle at the present time the large volumes of water, mud, silt, earth that erodes into this Brown Brook during rainstorms that is draining with great velocity via this Brown Brook from the H. & H. Land Corporation (Heritage) property north of Rt. 202 for a distance of one (1) mile. This is due to the "Heritage" construction of a golf course, grading roads, removal of thousands of trees and disturbing large quantities of earth along both sides of the Brown Brook north of Rt. 202.

January 18, 1974

Mr. William L. Garvey, P.E. - 2

ONLY COPY AVAILABLE

The addition of 750,000 gals per day of sewage wastewater as per H & H wastewater Report (McPhee) (every day in the year) derived from subterranean well water by Heritage to the surface then used to treat the sewage (human waste) in the sewer plant then discharged into the Brown Brook and in the "Sun" wetlands, lake and well water supply area for us to contend with, will destroy our land and our water supply and is confiscation of our property.

The question of whether this treated pollutant wastewater from the Heritage Sewage treatment plant is clean or is high in nutrients and/or other destructive elements is secondary. Our great concern is the flooding by added wastewater from Sewer Plant and pollution by rainfall erosion from the H. & H. Land Corp. property into the "Sun" lands, water supply and wells through this plateau area of our property.

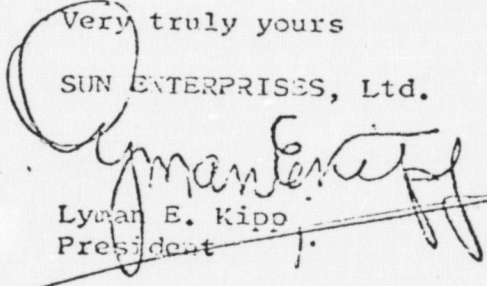
The Sun wetlands, lake areas, and "Sun" lands cannot be made a Ceptic field, Settling Basin, or surge tank for the use of the Heritage Hills Development, H & H Land Corp. or any other entity for any of uses proposed by this or any other Permit application.

We trust you will, from the foregoing information, find that there is a need for a Public Hearing on this proposed discharge. We sincerely request a Public Hearing be held in order to have all the testimony produced.

Thanking you for your kind consideration of this request, we remain

Very truly yours

SUN ENTERPRISES, Ltd.


 Lyman E. Kipp
 President

LFX/an

cc to Commissioner Biggone
 cc to Mr. L. Tufts, Supervisor, Town of Somers
 cc to Mr. William Florence, Atty.
 cc to Mr. Calvin Seber, West. Cty. Health Dept.
 cc to Mr. William Marcon, Engineer, Town of Somers
 cc to Board of Chairman, Board of Appeals, Somers, N.Y.

January 21, 1974

N.Y. State Dept. of Environmental Conservation
202 Tamaroneck Avenue
White Plains, New York 10601

Attn. Mr. Cesare J. Manfredi, P.E.
Senior Sanitary Engineer

Re: Sun Enterprises, Ltd. &
Heritage Hills

Dear Sir:

Mr. Howard Kelly, P.E., who represents Sun Enterprises, Ltd. as consulting engineer for our property south of Rt. 202, Somers, N.Y. has reviewed with us correspondence between him and your department during the last six months.

We refer to letter dated July 6, 1973 from Mr. H. Kelly, P.E. to your attention and we further refer to your letter to Mr. Kelly, P.E. dated July 26, 1973 with respect to flooding, pollution by siltation and erosion from Heritage Hills project, Warren St. Somers, N.Y. Copies of these letters are enclosed to refresh your memory.

There has elapsed some six (6) months since you stated in your letter of July 26, 1973 that you at no time entered on Sun Enterprises, Ltd. property and that "your main concern was the matter of siltation and erosion." Yet you have failed to investigate and terminate the heavy siltation and erosion that has taken place in the "Brown Brook", our (50) acre wetlands and in the ponds and waterways on the Sun Enterprises, Ltd. property from March 1973 to the present time, January 21, 1974.

You personally, and the N.Y.S.D.E.C., White Plains office, have been notified dozens of times by telephone and letters that our property south of Rt. 202, Somers, N.Y. was being buried and polluted with silt, mud and earth carried via "Brown Brook" during every rainstorm from "Heritage Hill Development, north of Rt. 202, for (1) mile where large scale excavation and grading (earth disturbance) and thousands of trees have been removed for a new golf course, earth roads, etc., parallel and adjacent to the "Brown Brook." The heavy siltation and erosion is still continuing and becoming progressively worse.

You were told by the writer personally in May and June 1973 that you were welcome to visit Sun Enterprises, Ltd. property any-

January 21, 1974

N.Y.S. Dept. of E. Co. - 2
 Mr. Cesare J. Manfredi, P.E.

January 21, 1974

Wireless Conservation

time to inspect and investigate the erosion and siltation, yet you state in your July 26, 1973 letter that you never entered the property of Sun Enterprises, Ltd.

It is quite clear that you did not answer the letter Mr. Kelly, P.E. wrote you July 6, 1973 and you admit you did not visit the Sun land (brook and wetland areas) as per your letter of July 26, 1973, therefore it is very evident that you do not know the conditions and the damage caused to Sun Enterprises, Ltd. property by the "Heritage Hills" pollution caused by constant heavy siltation and erosion.

We trust you will find time to answer this letter and explain why the N.Y. State Department of Environmental Conservation has not taken any action regarding this erosion, siltation and destruction of our property including the Brown Brook, wetland and water areas after having had full knowledge and notice of this serious problem.

Yours truly

SUN ENTERPRISES, Ltd.

Lyman E. Hipp, President

IEK/an

CERTIFIED MAIL

Return Receipt Requested

cc Commissioner James L. Birgane

N.Y.S.D.E.C. - Albany

cc Mr. Calvin Weber

Westchester County Dept. of Health

cc Mr. William Marcon, P.E., Town of Somers

cc Town Board, Town of Somers

Attn. Mr. Lawrence Tufts, Supervisor

85b

January 22, 1974

Mr. Lyman E. Kipp, President
Sun Enterprises, Ltd.
Route 100
Somers, New York 10589

Re: "Brown" Brook, H31-P44-18

Dear Mr. Kipp:

Thank you for your January 17, 1974 letter. I strongly disagree, however, with your reference to my November 13, 1973 letter as a "warning" or "policing". That letter was informational only, and extremely innocuous at that.

Please be advised that this Department (often I personally) has repeatedly investigated your charges of water quality contravention as the result of Heritage practices. I can only say that such claims were not substantiated by factual evidence, nor were they adequately established by your expert witnesses during the course of our nine days of public hearing.

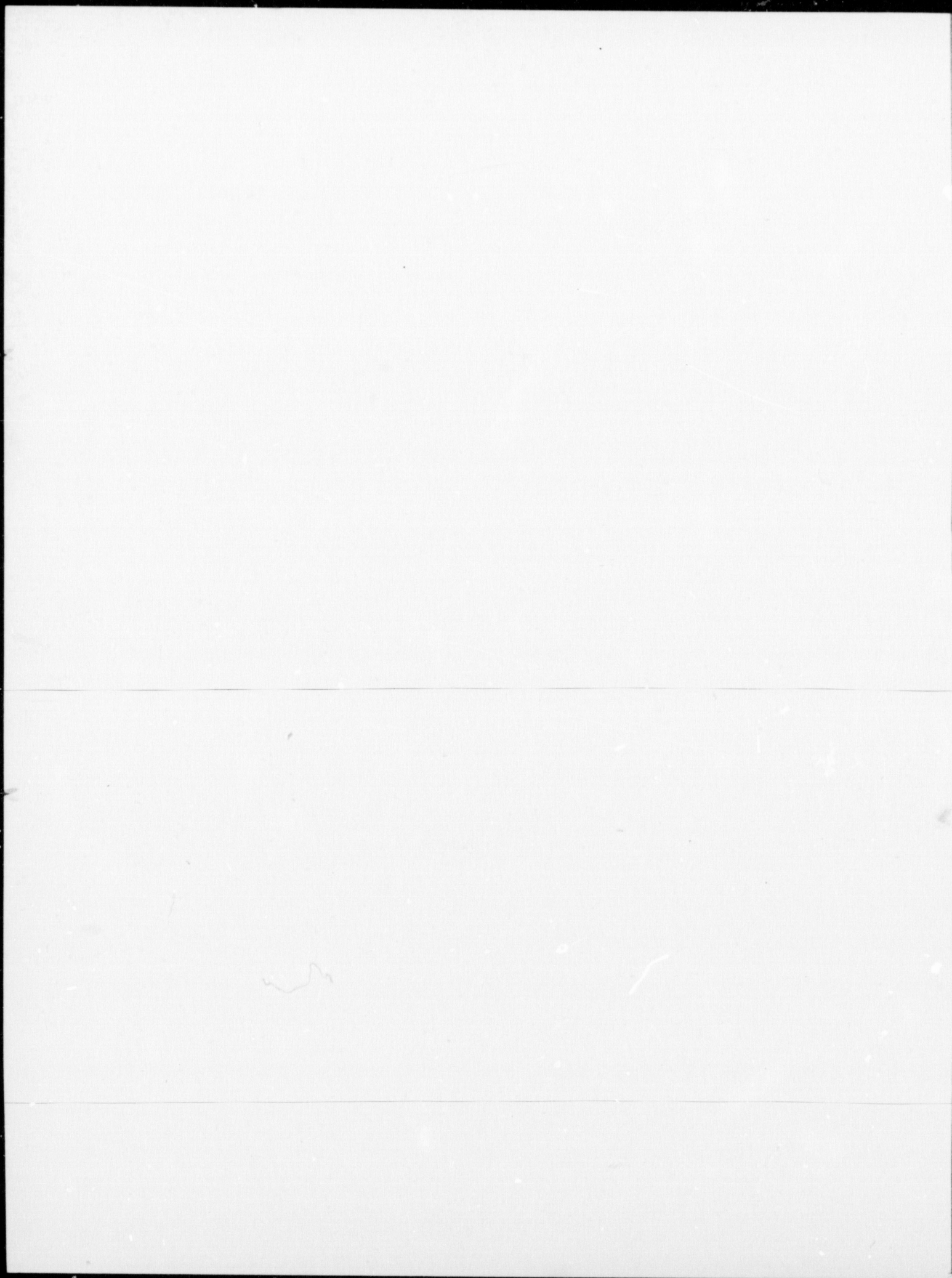
I recognize your opposition to this project and to the findings of the Department. I can assure you, however, that no sides were taken and that every courtesy and consideration was given you. All of us in the Department remain at your service to investigate those problems upon which we are empowered to act.

Respectfully,

Ralph Manna, Jr.
Alternate Local Permit Agent
Region 3

cc: L. Conera
J. Harrison
C. Weber

RM/mdw



Sun Enterprises, Ltd.

ROUTE 100 - SOMERS, NEW YORK 10589

Industrial - Commercial - Residential
Real Estate - Investment & Development

Tel: (914) 277-4300

January 28, 1974

New York State Dept. of Environmental Conservation
21 South Putt Corners Road
New Paltz, N. Y. 12561Attention Mr. Ralph Manna, Jr.
Alternate Permit Agent
Region #3Re: "Brown Brook"
H31-P44-18
Somers, N. Y.

RECEIVED

JAN 31 1974

REGULATORY
New York State Department of
Environmental Conservation
REGION #3

Dear Mr. Manna:

Thank you for your January 22, 1974 letter in answer to our letter of January 21, 1974. Your self serving and evasive letter sure is a cover up of conditions regarding the destructive erosion of mud, silt, top soil, etc. from "Heritage Hills" development north of Route 202, Somers, N.Y. via the "Brown" Brook into "Sun" downstream ("Brown" Brook) wetlands, water reservoir, well area and the "Sun" large plateau area certainly does not seem to concern you or the New York State Conservation Department which you state you represent in our (Sun) long term siltation objections.

You state in the second paragraph of your January 22, 1974 letter that you personally, along with others in your department, have repeatedly investigated our charges of water quality contravention (as the result of "Heritage" Construction practices.

Mr. Manna, how stupid do you think we are to read your letter and have you attempt to sell us the idea that there is no flooding, pollution by siltation of the "Brown" Brook south of Rt. 202, our wetlands, water reservoir and wells due to erosion from "Heritage" Hills" development, via the "Brown" Brook?

The fact that you state that our expert witnesses at "Dickerson" (9) days Public Hearing in Somers did not establish factual evidence regarding the erosion pollution is a distortion of the truth and you know it. If you will take the time to read the portions of the State record (Dickerson Hearing - Stream Protection) you will then understand Mr. H. Kelly, P.E., our engineer, together with other experts, specifically and thoroughly covered the erosion pollution, siltation, etc. that we have objected to for months - since March 22, 1973 by our letters and calls to your environmental department - without any action. The psychology you used in your letter of January 22, 1974 to put us on the defensive regarding the Sun protection of the Brown Brook - instead of doing your job and pursuing and correcting the erosion and siltation by Heritage Hills in the Brown Brook through Sun property south of Route 202 is a great attempt to avoid your responsibility, but we are not easily side-tracked.

January 28, 1974

N.Y.S. Dept. of Environmental Conservation - 2
Attention Mr. Ralph Manna, Jr.

It is very evident that you and your department have chosen sides in this erosion matter on the Sun property by Heritage Hills as you have not produced any reports to us or terminated this destructive condition following your investigations of our complaints. You have not had the courtesy over (10) months of complaints to answer our telephone calls and our written objections. You state you recognize our opposition to this project (Heritage Hills) and the findings of the Department of Environmental Conservation.

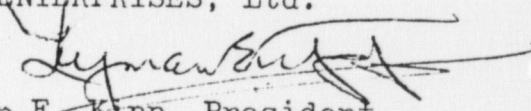
This is to inform you that we (Sun Enterprises, Ltd.) could not be more for the "Heritage Hills" Condominium Concept if we owned 99% of the project, therefore, your statement is distorted and untrue. Let us talk for ourselves and you take care of your duties as a paid employee of the Sovereign State of New York. You should protect all the people of this state and not choose sides in any matter before you regarding environmental conservation. Where are your reports and what action has been taken?

The last sentence of your letter states the Environmental Conservation Department is at our (Sun Enterprises, Ltd.) service to investigate problems upon which you are empowered to act. This statement is absurd as you and your department have been notified as aforementioned for (10) months yet the pollution by soil siltation, etc. has continued to become progressively greater with no action by your department to terminate same.

I trust you will apologize to us for your statement regarding our opposition to the "Heritage" project - then proceed to notify us of your investigation of our numerous complaints and then do something besides write letters to terminate this destructive erosion and siltation into our property, "Brown" Brook, the wetlands and our water reservoir areas. "Actions speak louder than words."

Yours truly

SUN ENTERPRISES, Ltd.


Lyman E. Kipp, President

LEK/an

Certified Mail
Return Receipt Requested

cc to Commissioner James L. Biggane
cc to Mr. Calvin Weber, P.E.
cc to Mr. William Marcon, P.E.
cc to Town Board, Town of Somers
cc to Mr. William Florence, Esq.
cc to Mr. L. Tufts, Town Supervisor, Town of Somers



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10007

MAY 1 1975

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Marshall, Bratter, Greene
Allison and Tucker
430 Park Avenue
New York, New York 10022

ATTN: Nicholas A. Robinson, Esq.

Re: H & H Land Corporation
NPDES Permit No.: NY 0026891

Dear Mr. Robinson:

I am in receipt of your letter dated April 10, 1975 and the enclosed affidavit submitted by Dr. Raul Cardenas, Jr. alleging violation by H & H Land Corporation of the above-referenced NPDES permit on February 27, 1975.

Telephonic communication with the permittee and a letter dated April 25, 1975 from Mr. Peter F. Blasi to me have revealed that on February 27, 1975, H & H Land Corporation was not discharging sewage from its facility. If any liquid was flowing through the outfall structure from the wastewater treatment plant on this date, such liquid was pure water from the permittee's potable water supply. Enclosed is a letter dated February 27, 1975 from Mr. Daniel E. Warren, Director of Engineering, Heritage Hills of Westchester, to Mr. Leonard J. Saccio describing the potable water discharge and its hydraulic function.

The permittee, through Mr. Warren and its Manager, Mr. Anthony Zibello, by letters dated January 9, 1975, February 3, 1975, March 11, 1975, and March 24, 1975, have notified the EPA that neither treated nor untreated sewage wastes have been discharged from its facility and that upon commencement of such discharge notification to the EPA would be made according to the terms of the NPDES permit. Such notification was timely made by a letter dated April 10, 1975, from Mr. Warren to Mr. Richard Baker, Chief, Status of Compliance Branch, Region II, EPA.

Your letter and the accompanying affidavit indicate that effluent limitations in the NPDES permit were violated on February 27, 1975; the alleged violation consisting of a phosphorus discharge in excess of the limitations provided in the permit.

Under Condition C-2 of the "Special Conditions" on page 14 of the NPDES permit, the permittee is allowed three months from the "date the facility becomes operational" to meet effluent limitations delineated in the permit. A facility is operational when it commences discharging effluent into the receiving waters on a regular basis. Since on April 10, 1975, the facility became operational, the permittee has until July 10, 1975 to conform its discharge to the effluent limitations contained in the permit. Until that date, violation of effluent limitations is not possible.

Should you have any questions concerning this matter feel free to contact me.

Sincerely yours,

Richard G. Tisch
Attorney
Water Enforcement Branch
Enforcement and Regional Counsel Division

Enclosure

cc: Honorable Dudley B. Bonsal
U. S. District Judge
U. S. Courthouse

William R. Bronner, Esq.
U. S. Department of Justice
Assistant U. S. Attorney
Southern District of New York

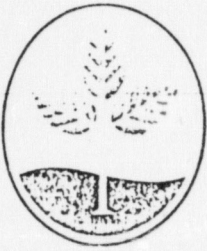
O. Harper Le Compte, Esq.
Assistant Attorney General
The Capitol

Leonard J. Saccio, Esq.
Sturges & Mathes
Attorneys and Counselors at Law

91b

-3-

cc: Blasi & Zimmerman
Attorney at Law
National Bank of Westchester
Building
Tarrytown, New York



Heritage Hills of Westchester

February 27, 1975

Mr. Leonard J. Saccio, Esq.
Sturges & Mathes
Southbury, Conn. 06488

Re: Heritage Hills Sewer Treatment Plant

Dear Mr. Saccio:

Per your request this afternoon regarding information about the possibility of sewage being discharged through our outfall sewer on Route 202, the following should explain what is taking place.

Last week, the number two aeration tank, which has been empty, was filled with clean potable water from our water system. This was done to enable us to simulate a flow through the Plant. The Plant has already been checked out mechanically. By creating an actual flow of clear water through the Plant, we are able to hydraulically check all phases of the facility as well as calibrate all the instrumentation and recording devices. This procedure is advisable in order to detect any possible misadjustments prior to the actual beginning of sewage flow through the Plant.

The water flowed from aeration tank number two into the clarifiers, rapid sand filters, contact tanks, intermittant sand filters, post aeration chamber, and finally through the outfall structure on Route 202. ?

This process of testing has been done under the supervision of McPhee, Smith and Rosenstein in conjunction with our Treatment Plant operator. Testing should be completed no later than mid-next week.

Please note that we are not discharging sewage at this time. The only liquid flowing through the outfall structure from the Treatment Plant is pure water from our potable water system.

Our New York State registered sewer plant operator is Mr. Tony Zibello, and his New York Number is 5398.

Sincerely,

Daniel E. Warren

Daniel E. Warren
Director of Engineering
HERITAGE HILLS OF WESTCHESTER

DEW/ldl

BLASI AND ZIMMERMAN
ATTORNEYS-AT-LAW
NATIONAL BANK OF WESTCHESTER BUILDING
360 SOUTH BROADWAY
TARRYTOWN, NEW YORK 10591

April 25, 1975

Richard Tisch, Esq.
Water Enforcement Branch
Enforcement and Regional Counsel
Division
26 Federal Plaza
New York, New York 10007

Re: Heritage Hills of Westchester
Sewage Treatment Plant
NPDES Permit Number: NY 0026891

Dear Mr. Tisch:

In response to your inquiries, we are forwarding the following information:

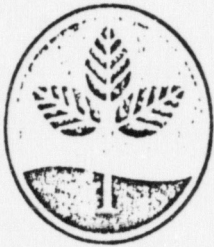
1. On February 27, 1975, the Heritage Hills Sewage Treatment Plant was not discharging. There is forwarded herewith copy of letter of February 27, 1975, from Daniel E. Warren, Director of Engineering, Heritage Hills of Westchester, addressed to Leonard J. Saccio, Esq.
2. On April 10, 1975, under the supervision of its Licensed Operator, Mr. Tony Zibello, the Heritage Hills of Westchester Sewage Treatment Plant began operation. A letter of notification dated April 10, 1975, was sent to your agency addressed to Mr. Baker. Notice was also sent by a copy of said letter to Westchester County Department of Health and New York State Department of Environmental Conservation, SPDES Permit Section. A copy of said letter is also enclosed.
3. Sampling and testing are being conducted in accordance with the provisions of the permit, and the plant is under the supervision of Mr. Zibello, who is a registered sewer plant operator, New York Number 5398.

Very truly yours,

Peter A. Blasi

PFB:b

Encs.



Heritage Hills of Westchester

April 10, 1975

U. S. Environmental Protection Agency
Region II
Permits Administration Branch
26 Federal Plaza
New York, New York 10007

RE: NPDES Permit Number: NY 0026891

Dear Mr. Baker:

Per the requirements of our NPDES Permit we are now notifying your department that the Heritage Hills of Westchester Sewage Treatment Plant has now begun discharging effluent.

The operation of the plant is under the supervision of our licensed operator, Mr. Tony Zibello. If you need any further information about the plant or its operation, I'm sure Mr. Zibello will be more than glad to assist you.

Sincerely,

Daniel E. Warren
Director of Engineering

DEW/mel

CC: Chief, SPDES Permit Section
Cesar Manfredi - D. E. C.
Calvin Weber - Westchester Health
W. Mc Phee
T. Zibello
R. Carnaghi ← THIS COPY GOES TO

County of Westchester

DEPARTMENT OF HEALTH

White Plains, N. Y. 10601

County Office Building

February 19, 1975

Heritage Hills Sewage Works Corporation
Route 100
Somers, N. Y. 10589

Re: Wastewater Treatment Facility
Heritage Hills Sewerage Works Corp.
Somers (T), Westchester County

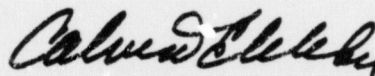
Gentlemen:

This department is in receipt of a letter dated February 5, 1975 from Walter T. McPhee, of McPhee, Smith and Rosenstein Engineers, stating that the treatment units for the above facility have been completed in accordance with the approved plans and specifications. Several items remain to be completed as set forth in the aforementioned letter. He requests that the plant be accepted and approved for the treatment and discharge of sewage.

This department has consulted the New York State Department of Environmental Conservation concerning the placement of this facility in operation and has been advised that based on inspection, and possession of the proper permit by the Heritage Hills Sewage Works Corporation, they have no objection to further approval of living units.

Based on the above and inspections made by representatives of this department, the above facility may be placed in operation subject to compliance with terms and conditions of approvals and permits issued therefor, and compliance with applicable state, county and local regulations.

Very truly yours,



Calvin E. Weber, P.E.
Assistant Commissioner of Health
For Environmental Services

CEW:rr

cc: N.Y.S.D.W.R.

N.Y.S.D.E.C. Bur. of Sewage Programs

N.Y.S.D.E.C., Reg. 3, WPRO

N.Y.S.D.E.C., Reg. 3, New Paltz

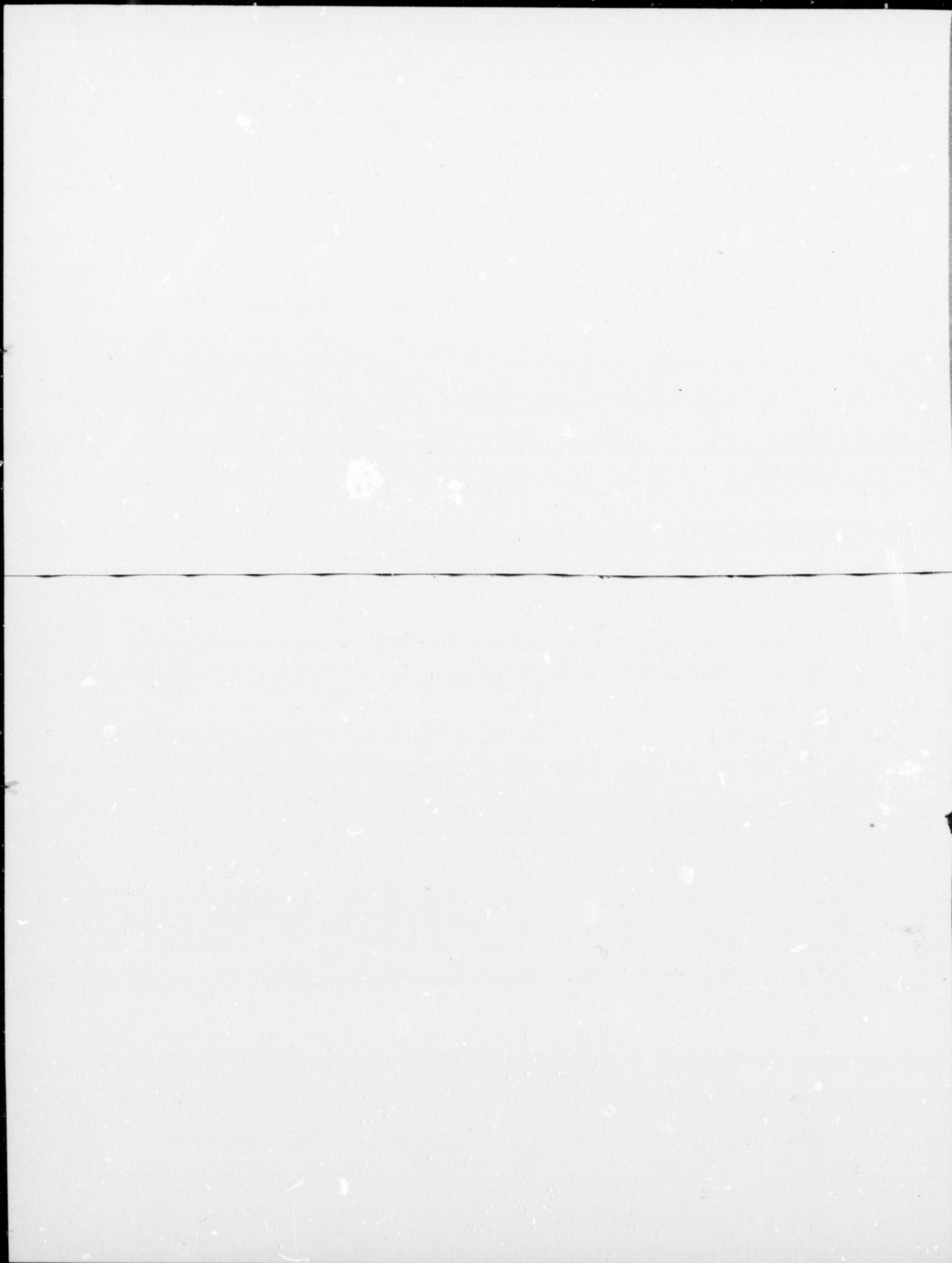
Town Engineer, Somers (T)

Bldg. Inspector, Somers (T)

McPhee, Smith & Rosenstein

Mt. Kisco Field Office

file



COPY RECEIVED

UNITED STATES ATTORNEY

Service of three (3) copies of the within
is hereby admitted this day of
19 .

M. B. Mudd 12-3-75
Attorney for

Service of three (3) copies of the within
is hereby admitted this 3rd day of

1975

A. Robinson
Attorney for
Marshall Bretter, et al
1:00 pm

COPY RECEIVED

UNITED STATES ATTORNEY